(32,598)

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1927

## No. 217

HARRY LEVY, BANKRUPT, PETITIONER,

*vs.*

INDUSTRIAL FINANCE CORPORATION, METROPOLITAN TRUST COMPANY, AND CHATHAM & PHENIX NATIONAL BANK OF NEW YORK CITY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

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**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1926

No. —

HARRY LEVY, Bankrupt, Petitioner,

versus

INDUSTRIAL FINANCE CORPORATION, METROPOLITAN TRUST Company, and Chatham & Phenix National Bank, of New York City, Respondents

On Petition for a Writ of Certiorari to the United -- Circuit Court of Appeals for the Fourth Circuit

**Certified Transcript of Record**

[fol. 1] IN UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT

No. 2528

HARRY LEVY, Bankrupt, Petitioner,

versus

INDUSTRIAL FINANCE CORPORATION, METROPOLITAN TRUST Company, and Chatham & Phenix National Bank, of New York City, Respondents

On Petition to Superintend and Revise, in Matter of Law, Proceedings of the District Court of the United States for the Eastern District of Virginia, at Norfolk

PETITION—Filed May 27, 1926

The Petition of Harry Levy, the above named Bankrupt, respectfully represents:

1st. That on the 10th day of December, 1924, he was duly adjudicated a Bankrupt by the District Court of the United States for the Eastern District of Virginia; that on

the 14th day of January, 1925, he filed his Petition for Discharge in Bankruptcy as a Bankrupt, together with the Recommendation of the Trustee of his Estate in Bankruptcy and the Referee in Bankruptcy, recommending such discharge.

2nd. That on the 30th day of March, 1925, the Chatham and Phœnix National Bank of the City of New York, Metropolitan Trust Company of the City of New York and the Industrial Finance Corporation of the City of New York, pursuant to the provisions of Section 14 of the Bankruptcy Act, did file specifications in opposition to the Dis-
[fol. 2] charge of said Bankrupt to which said specifications the Bankrupt duly filed his Exceptions and thereafter on the 17th day of April, 1925, filed his Answer to said Specifications, denying each and every allegation thereof, as will more fully appear by a transcript of the record in these proceedings.

3rd. That the Honorable District Court of the United States for the Eastern District of Virginia did, on the 24th day of June, 1925, by a proper Order of Reference of said Court, refer to the Honorable R. T. Thorp as Special Master, the issues raised by said Specifications in Opposition to the Discharge of said Bankrupt and the Bankrupt's Answer thereto, for a finding to be had by said Special Master and report to the Court; that after a trial of said issues by the said Special Master, the said Special Master did, on the 11th day of September, 1925, make his finding of fact and report to the said Court, by which finding the said Special Master did find and hold that the said Bankrupt was entitled to his Discharge; to which said finding of the said Special Master, the aforementioned Objecting Creditors of the said Bankrupt did, on the 25th day of September, 1925, file their Exceptions in said District Court, which said Exceptions the said District Court did, on the 21st day of May, 1926, sustain and entered a final Order on said 21st day of May, 1926, denying to the Bankrupt his Discharge.

4th. Your Petitioner respectfully represents that the Honorable District Court did commit error in matter of law, to his prejudice in its action in sustaining the Exceptions to the finding of the Special Master, in that

(a) The Honorable District Court erred in sustaining the Exceptions of the Objecting Creditors to the report and findings of the Special Master, which findings were that the Bankrupt is entitled to his Discharge.

(b) The Honorable District Court erred in refusing to sustain the Bankrupt's Exceptions to the Specifications in Opposition to the discharge of the Bankrupt filed by the Objecting Creditors, in that said Specifications in Opposition to the discharge set forth no act committed by the Bankrupt which by the provisions of sub-section (3) Sec-
[fol. 3] tion 14 of the Bankruptcy Act, would be or are a bar to the discharge of said Bankrupt.

(c) The Honorable District Court erred in refusing to confirm the report and findings of the Special Master that the Bankrupt is entitled to Discharge because the finding of said Special Master was based upon conclusive evidence and said finding was sufficiently supported by the evidence and therefore said finding should have been confirmed.

(d) That the Honorable District Court erred in refusing the Bankrupt his Discharge in that no evidence was adduced to support the Specifications in Opposition to the discharge that the Bankrupt himself or some one acting at his direction made a materially false statement in writing to the Objecting Creditors or either of them, for the purpose of the bankrupt obtaining credit, money or property from them, or either of them.

(e) The Honorable District Court erred in denying the Bankrupt his Discharge in that no matter or thing had or done by the Bankrupt which by the provisions of said Section 14 of the Bankruptcy Act or any sub-section thereof, would operate as a bar to discharge, was established by the evidence to have been done or committed by the said Bankrupt.

5th. Your Petitioner respectfully represents that he is entitled to his Discharge in Bankruptcy, having committed no act which by the provisions of Section 14 of the Bankruptcy Act or any of the sub-sections thereof, he is barred of a discharge in Bankruptcy, and respectfully prays that this Honorable Court may review and revise and superintend in matter of law, the Decision and Order of the Dis-

trict Court of the United States for the Eastern District of Virginia, and prays that said Order of the said District Court of the United States for the Eastern District of Virginia, entered on the 21st day of May, 1926, may be wholly reversed and set aside, that an order may be entered granting the Discharge in Bankruptcy to your Petition and that service of this Petition may be had in due form of law upon the said Chatham and Phœnix National Bank of the City of New York, Metropolitan Trust Company of the City of [fol. 4] New York and the Industrial Finance Corporation of the City of New York, Objecting Creditors.

Harry Levy, by S. M. Brandt, Attorney for Petitioner.

*Duly sworn to by S. M. Brandt. Jurat omitted in printing.*

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In United States Circuit Court of Appeals

In Bankruptcy

In the Matter of Harry Levy, Bankrupt

Notice of Filing of Petition

To R. Randolph Hicks, Esq., Satterlee and Canfield, Attorneys for Industrial Finance Corporation, Metropolitan Trust Company, and Chatham & Phœnix National Bank, of New York City:

Take notice that on the 27th day of May, 1926, Harry Levy, the above named Bankrupt, will file in the United States Circuit Court of Appeals for the Fourth Circuit at Richmond, Virginia, a Petition to Superintend, Review and Revise in matter of law, a certain Order of the United States District Court for the Eastern District of Virginia, [fol. 5] entered in the above entitled cause on the 21st day of May, 1926, denying to the Bankrupt his Discharge in Bankruptcy, and by said Petition will pray that the said Judgment and Order aforesaid, may be reviewed and revised in matter of law, for and on account of the alleged errors committed by the District Court of the United States

for the Eastern District of Virginia, as set forth in said Petition, a copy of which is hereto attached.

Harry Levy, by S. M. Brandt, Counsel.

Legal service of the above Notice & Petition is hereby accepted this 27th day of May, 1926.

R. Randolph Hicks, Satterlee & Canfield, Attorneys for Industrial Finance Corporation, Metropolitan Trust Company, and the Chatham and Phœnix Nat'l Bank of New York City, Objecting Creditors.

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In United States Circuit Court of Appeals

[Title omitted]

Notice to Demur, Answer or Move to Dismiss

[fol. 6] To Industrial Finance Corporation, Metropolitan Trust Company, and Chatham & Phœnix National Bank, of New York City, respondents:

Take notice that you are required to demur, answer, or move to dismiss the petition to superintend and revise, filed in this office in the above-entitled cause on May 27, 1926—within fifteen days from this date, as required by Rule 36 of this Court.

May 28, 1926.

Claude M. Dean, Clerk U. S. Circuit Court of Appeals, Fourth Circuit, by R. M. F. Williams Jr., Deputy Clerk. (Seal.)

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In United States Circuit Court of Appeals

Memorandum re Service of Petition and Notice

A certified copy of the petition to superintend and revise, together with the original of the above notice annexed, were mailed to R. Randolph Hicks, at New York, N. Y., Solicitor for Respondents, on May 28, 1926.

Claude M. Dean, Clerk U. S. Circuit Court of Appeals, Fourth Circuit.

[fol. 7] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

NOTICE OF MOTION TO DISMISS—Filed June 12, 1926

SIR: Please take notice that the respondents herein have filed a motion for an order dismissing the petition of the Petitioner herein filed the 27th day of May, 1926, a copy of which motion is annexed hereto, and made a part hereof, and that said motion will be for hearing before a Judge of the United States Circuit Court of Appeals for the Fourth District, at the Court House in Richmond, Virginia, at the opening of Court on the 19th day of October, 1926, or as soon thereafter as counsel may be heard.

R. Randolph Hicks, Attorneys for Respondents.

To S. M. Brandt, Esq., Attorney for Petitioner, Norfolk, Virginia.

Dated June 11, 1926.

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[fol. 8] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

MOTION TO DISMISS

The Respondents herein, the Industrial Finance Corporation, the Metropolitan Trust Company and the Chatham & Phenix National Bank, of New York City, appearing by R. Randolph Hicks, their attorney, move the Court for an order dismissing the petition of Harry Levy, the Petitioner herein, filed in this Court the 27th day of May, 1926, upon the following grounds:

I. That a petition to superintend and revise, etc., will not lie in the case at bar.

II. That the Petitioner herein has not set forth in his Petition any question or questions of law to be reviewed by this Court.

R. Randolph Hicks, Satterlee & Canfield, Attorneys for Respondents, 49 Wall Street, Borough of Manhattan, City and State of New York.

[fol. 9] [Caption omitted]

IN UNITED STATES DISTRICT COURT, EASTERN VIRGINIA

In Bankruptcy. No. 3938

In the Matter of HARRY LEVY, Bankrupt

SPECIFICATIONS OF OBJECTIONS TO BANKRUPT'S DISCHARGE—Filed March 30, 1925

The Chatham & Phenix National Bank of the City of New York, the Metropolitan Trust Company of the City of New York, and the Industrial Finance Corporation of 100 East 42nd Street, New York City, parties interested in the Estate of Harry Levy, Bankrupt, do hereby oppose the granting to him of a discharge from his debts and for the grounds of such opposition do file the following specifications:

[fol. 10] (1) On or about the 30th day of September, 1922, the objectors purchased from the American Home Furnishers Corporation, a corporation duly organized under the laws of Virginia, its issue of 7% Sinking Fund Serial Gold Notes aggregating $1,200,000. Each of the objectors purchased one-third thereof, which said notes were personally endorsed and guaranteed by Harry Levy, President of said Corporation. At the time of the making of the purchase of said notes, the said Harry Levy furnished to the objectors a statement of the assets and liabilities of the American Home Furnishers Corporation. Upon information and belief, said statement set out the assets of the company at a figure in excess of more than $1,000,000. of the actual assets. The Metropolitan Trust Company, The Chatham & Phenix National Bank and the Industrial Finance Corporation in purchasing said issue of 7% Sinking Fund Serial Gold Notes relied upon said balance sheet and the personal assurance of said Harry Levy to the effect that said balance sheet was to his own knowledge a true reflection of the condition of the American Home Furnishers Corporation. Said statements of said Harry Levy were made by said Levy with full knowledge on his part that said statements were false and fraudulent in order to induce the above-mentioned financial corpora-

tions to purchase said notes and said corporation, in making the purchase of said notes, relied upon said statements.

(2) Prior to the purchase of said notes by the parties filing this objection, said parties had Haskins & Sells Certified Public Accountants, examine the books of the American Home Furnishers Corporation and certify to them the result of such examination. That said Haskins & Sells reported to the parties filing this objection that the books of said American Home Furnishers Corporation showed assets substantially as set out in said balance sheet of the 30th of September, 1922. That the parties filing this objection relied upon said books of the American Home Furnishers Corporation as reflecting the true condition of said corporation, whereas in truth and in fact, with the knowledge of said Harry Levy and in order to deceive the said Hasking & Sells and the parties filing this objection, upon information and belief said books showed assets of approxi-
[fol. 11] mately $1,000,000 in excess of the actual assets of the company.

(3) That subsequently, to-wit, on or about the 1st day of December, 1923, a conference was held in the City of Norfolk, in the office of the Trust Company, at which Vere Brown, Vice President of the Industrial Finance Corporation, and Arthur J. Morris, Vice President and General Counsel of said corporation, were present and that in said conference said Harry Levy admitted that the assets of said corporation, to-wit, the American Home Furnishers Corporation, at the time of the issue of the 7% Gold Notes were padded to the amount of not less than $1,000,000.

Wherefore, the undersigned pray that the prayer of petition for discharge filed herein by Harry Levy be denied.

Chatham & Phenix National Bank of the City of New York, Metropolitan Trust Company of the City of New York, Industrial Finance Corporation, by Satterlee & Canfield, Attorneys.

*Duly sworn to by Arthur J. Morris. Jurat omitted in printing.*

[fol. 12] IN UNITED STATES DISTRICT COURT

EXCEPTIONS TO SPECIFICATIONS—Filed April 17, 1925

And now comes the bankrupt and excepts to the specifications filed herein on the 30th day of March, 1925, in opposition to his discharge and further says that the same are not sufficient in law and as grounds for such exceptions and demurrer assigns the following:

1. That said specifications set forth no matter, act or thing which, by the provisions of Section 14 of the Bankrupt Act, and the subdivisions thereof, are sufficient cause for the denial to the bankrupt of his discharge.

2. That said specifications are not verified as required by law.

S. M. Brandt, Attorney for Bankrupt.

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IN UNITED STATES DISTRICT COURT

ORDER FILING AMENDED OBJECTIONS AND SPECIFICATIONS—Filed June 18, 1925

This day came Chatham & Phœnix National Bank, Metropolitan Trust Company, and Industrial Finance Corporation, and filed its amended objections and specifications thereof to the application of Harry Levy, Bankrupt, for his discharge herein.

D. Lawrence Groner, U. S. District Judge.

Norfolk, Virginia.

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[fol. 13] IN UNITED STATES DISTRICT COURT

AMENDED SPECIFICATION OF OBJECTIONS—Filed Before Special Master

The Chatham & Phœnix National Bank of the City of New York, the Metropolitan Trust Company of the City of New York, and the Industrial Finance Corporation of 100 East 42nd Street, New York City, parties interested

in the Estate of Harry Levy, Bankrupt, through their attorneys, Satterlee & Canfield of 49 Wall Street, do hereby oppose the granting to him of a discharge from his debts and for the grounds of such opposition do file on information and belief, the following specifications, amending specifications previously filed:

The above named bankrupt has obtained money on credit upon materially false statements in writing, made by him to the objecting creditors above named, for the purpose of obtaining credit from the said creditors, in that on or about the 30th day of September, 1922, the said bankrupt, as the President of the American Home Furnishers Corporation of Norfolk, Virginia, did knowingly and fraudulently furnish materially false statements in writing to the above mentioned creditors of the financial condition of the said American Home Furnishers Corporation, which represented the financial status of the American Home Furnishers Corporation to be good and substantial, whereas in truth and fact said statements were materially false and were made by the said bankrupt for the purpose of obtaining, from the above mentioned creditors, money and on credit for the said corporation, which would in turn be a benefit to him as the principal stockholder of said corporation, and which materially false statements were relied upon by the said above mentioned creditors, and the money thereafter was obtained on credit by the said bankrupt, as President of the said American Home Furnishers Corporation from the said above mentioned creditors, upon a series of notes aggregating $1,500,000.00, each of which notes was guaranteed by said bankrupt, as will appear from an Indenture protecting said notes and describing [fols. 14 & 15] same, a copy of which is attached hereto as Exhibit "A."

Subsequently the said American Home Furnishers Corporation paid $300,000 of said notes, and thereafter the undersigned entered into a new agreement with the American Home Furnishers Corporation and said Harry Levy by which they exchanged said remaining notes for a new series of notes aggregating approximately $1,200,000.00 as will appear from a copy of said agreement attached hereto as Exhibit "B."

Thereafter the said American Home Furnishers Corporation became bankrupt and there remains unpaid on account of said last mentioned notes approximately $950,000.00 for which the said bankrupt is now liable to the said above mentioned creditors as the endorser of the said notes as set out in said Exhibit "B."

Wherefore, the undersigned pray that the prayer of petition for discharge filed herein by Harry Levy be denied.

Chatham & Phenix National Bank of the City of New York, Metropolitan Trust Company of the City of New York, Industrial Finance Corporation, by Satterlee & Canfield.

*Duly sworn to by Charles L. Williams et al. Jurats omitted in printing.*

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[fol. 16] EXHIBIT "B" TO AMENDED SPECIFICATIONS

Memorandum of agreement made and entered into this 25th day of June, 1923, by and between the American Home Furnishers Corporation, hereinafter referred to as the "Corporation," party of the first part, the Metropolitan Trust Company of the City of New York, trustee, hereinafter referred to as the "Trustee," party of the second part, Harry Levy, of the City of Norfolk, Virginia, party of the third part, and Chatham & Phenix National Bank of the City of New York, Industrial Finance Corporation of — and Metropolitan Trust Company of the City of New York, hereinafter referred to as "Note-holders," parties of the fourth part, Witnesseth:

Whereas the corporation did as of the 30th day of September, 1922, execute its trust indenture to the Trustee, providing for the issue of not exceeding $1,500,000. of 7% sinking fund serial gold notes, and

Whereas pursuant to said trust indenture there are now outstanding $1,200,000. in face value of said notes, said notes being held as follows:

[fol. 17] $400,000 by the Chatham & Phenix National Bank of the City of New York;

$400,000 by the Industrial Finance Corporation, and

$400,000 by the Metropolitan Trust Company of the City of New York, and

Whereas, under the terms of said trust indenture there is now in the hands of the Trustee $50,000 in the sinking fund for the purpose of meeting the payments on such notes, and it is impossible for the Corporation to meet the requirements of the said trust indenture at this time, and

Whereas a Creditors' Committee has been formed for said Corporation and has proposed a plan for the readjustment of the affairs of the corporation which contemplates the execution by the corporation to each creditor thereof of eighteen promissory notes, each for 1/18 of the total amount of the said creditors' claim, which notes are to be dated the first day of August, 1923, and are to mature monthly beginning the 1st day of October, 1923, and

Whereas it is the desire of all the parties hereto, if said plan shall become operative, to participate therein and to eliminate the said trust indenture and exchange the notes held thereunder for new notes substantially in accordance with the plan set forth by said creditors' committee, and to protect said noteholders insofar as they are now protected.

Now, therefore, in consideration of the mutual promises herein contained, and One Dollar of lawful money of the United States paid in hand by each of the parties hereto to the other, the receipt whereof is hereby acknowledged, and other good and valuable considerations, it is agreed by and between the parties hereto as follows:

Each noteholder shall receive in exchange for the notes of the Corporation which they now hold under said trust [fol. 18] indenture, eighteen new notes each for 1/18 of the total face amount of the notes now held by each Noteholder, which notes shall be executed by the Corporation dated August 1, 1923. The first of these notes shall become due and payable on the first day of October, 1923, and one of such notes shall become due and payable each and every month thereafter until all of said notes shall be paid in full with interest at the rate of seven per cent per annum from the date thereof. Said notes shall be endorsed by the said party of the third part and each endorsement shall take the place of the guarantee which the said noteholders now hold made by said party of the third part, and said guarantee shall be surrendered by the Trustee to said party of the third part; that the corporation shall upon

the exchange of said notes forthwith destroy said serial notes so received by it in exchange for its new notes.

Each of the parties hereto agree with the other that the sum of $50,000.00 now on deposit with the Trustee pursuant to the terms of the trust indenture so far as they are applicable to the sinking fund shall be distributed by the said Trustee pro rata among the Noteholders in accordance with their holding of serial notes under said trust indenture, and that the sums so distributed shall be credited by each Noteholder on the notes now held.

It is further understood and agreed that in arriving at the amount for which new notes shall be issued in accordance with the proposed plan, interest on the face of the notes shall be added up to the first of August, 1923 at 7% per annum, pursuant to the terms of said notes and said trust indenture; that from the amount shall be deducted the proportion which each Noteholder shall receive from said sinking fund as hereinbefore provided, and the Corporation agrees to give to each Noteholder 18 notes as hereinbefore provided and in accordance with said plan, for 1/18 of the total thus arrived at, said notes to bear interest and endo-sement as aforesaid.

This agreement is made upon condition that the Committee shall receive proxies or powers of attorney from a sufficient number of creditors so that under the terms [fol. 19] of the plan proposed the Creditors' Committee shall in their judgment declare the plan operative and only on such condition; if the Creditors' Committee shall not receive sufficient proxies to declare said plan operative said trust indenture and all the provisions thereof and said notes issued thereunder shall remain in full force and effect.

In the event that this agreement shall become operative, the Trustee is hereby authorized and directed to deliver, upon receipt by the Noteholders of the notes provided for herein, the trust agreement, cancelled, and from the receipt of said new notes said trust indenture and the terms thereof shall be of no effect.

It is further Understood and agreed that any notice that may have been given under said trust indenture by any of the Noteholders to the Trustee shall, pending this agreement, be considered as withdrawn and as of no effect, and

if the plan of the Creditors' Committee becomes operative, all such notice shall be cancelled and withdrawn by the Noteholders giving such notice. In the event, however, of the plan not becoming operative and the trust agreement together with the notes thereunder remaining in full force and effect, any such notice shall be considered as dated on the day on which the Creditors' Committee advised the Trustee and the Noteholders there under that said plan is not and will not become operative.

It is further understood and agreed that upon the delivery of said trust indenture cancelled and the receipt of the new notes herein provided for, the Noteholders release and forever discharge the Trustee from all claims and demands of every kind and nature under said trust indenture and agree that the Trustee shall be relieved from all duties or responsibilities provided for in said trust indenture.

In witness whereof, the parties hereto have set their hands and seals the 25th day of June, 1923.

American Home Furnishers Corporation, by Harry [fol. 20] Levy, President. Attest: H. H. Shoemaker, Secretary. Metropolitan Trust Company of the City of New York, by C. W. Weston, Vice-President. Attest: Geo. V. Hartman, Secretary. Harry Levy. (L. S.) Chatham & Phenix Natl. Bank of the City of New York, by W. T. Perkins, Vice-President. Attest: W. H. Strauss, Secretary. Industrial Finance Corporation, by Arthur J. Morris, V. P. & G. C. Attest: J. B. Gilder, Secretary. Metropolitan Trust Company of the City of New York, by C. W. Weston, Vice-President. Attest: Geo. N. Hartman, Secretary.

[fol. 21] State of Virginia,
City of Norfolk, ss:

On the 1st day of August 1923, before me personally came Harry Levy, to me known, who, being by me duly sworn, did depose and say, that he resides in Norfolk, Virginia; that he is the President of the American Home Furnishers Corporation, the Corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order

of the board of directors of said corporation, and that he signed his name thereto by like order.

Mattie S. Rem, Notary Public. My commission expires May 17, 1925.

STATE OF NEW YORK,
County of New York, ss:

On the 25th day of June 1923, before me personally came C. W. Weston, to me known, who being by me duly sworn, did depose and say, that he resides in Montclair, New Jersey; that he is the Vice-President of the Metropolitan Trust Company of the City of New York, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Adele F. Shaw, Notary Public, Kings County, No. 60. Certificate filed in New York County. N. Y. Co. No. 85. New York Register No. 4255. Kings County Register No. 4066. Commission expires March 30, 1925.

[fol. 22] STATE OF VIRGINIA,
City of Norfolk, ss:

On the 1st day of August, 1923, before me personally came Harry Levy, to me known and known to me to be the individual described in and who executed the above instrument and he duly acknowledged to me that he executed the same.

Mattie S. Rem. My commission expires May 17th, 1925.

STATE OF NEW YORK,
County of New York, ss:

On the 25th day of June, 1923, before me personally came W. T. Perkins, to me known, who, being by me duly sworn, did depose and say, that he resides in 505 West End Avenue, New York City; that he is the Vice-President of the Chatham & Phenix National Bank of the City of New York, the Corporation described in and which executed the above instrument; that he knows the seal of said corpora-

tion; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Adele F. Shaw, Notary Public, Kings Co., No. 50. Certificate filed in New York County. N. Y. Co. No. 23. N. Y. Register No. 4238. Kings County Register No. 4088. Commission expires March 26, 1924.

STATE OF NEW YORK,
County of New York, ss:

On the 25th day of June, 1923, before me, personally came Arthur J. Morris, to me known, who being by me duly sworn, did depose and say, that he resides in Ossing, New York; that he is the Vice-President of the Industrial [fol. 23] Finance Corporation of the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order.

Adele F. Shaw, Notary Public, Kings Co., No. 50. Certificate filed in New York County. N. Y. Co. No. 86. N. Y. Register No. 4257. Kings County Register No. 4860. Commission expires March 20, 1924.

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EXHIBIT "A" TO AMENDED SPECIFICATIONS

Indenture, dated September 30, 1922, entered into by and between American Home Furnishers Corporation, a corporation duly organized and existing under the laws of the State of Virginia, with its principal office in the City of Norfolk, and State of Virginia (herein termed "Corporation"), of the first part, and Metropolitan Trust Company of the City of New York, a corporation duly organized and existing under the laws of the State of New York, as Trustee (herein termed "Trustee"), of the second part.

The Corporation, in furtherance of its policy and plan to fund its present indebtedness and to finance its current

sales by arrangement with the Industrial Finance Corporation, the parent organization of the Morris Plan banks, and through the use of the Morris plan of retail trade acceptances whereby it will be enabled to realize cash on its daily sales and at the same time extend to its customers credit and the opportunity of making purchases by divided payments, thus increasing the business for the Corporation, has duly resolved to execute and issue its Seven Per Cent. Sinking Fund Serial Gold Notes, in an amount not exceeding the principal sum of one million five hundred thousand [fol. 24] dollars ($1,500,000), said Notes to be dated as of September 30, 1922, to bear interest at the rate of seven per cent. (7%) per annum, payable quarterly on the thirtieth days of December, March, June and September in each year upon surrender of the respective coupons thereto attached, and to mature, be subject to redemption, subject to registration as to principal, and with sinking fund provisions, as hereinafter and in said Notes provided. The Corporation has in like manner duly resolved, for the benefit of the holders of said Notes, as well as of the Trustee, to execute this agreement to the Trustee, under and subject to the terms of which said Notes are to be issued, and the form of said Notes and of the coupons attached thereto and of the Trustee's certificate thereon, are to be substantially as follows:

Series —. No. —. $—.

American Home Furnishers Corporation Seven per Cent Sinking Fund Serial Gold Notes

American Home Furnishers Corporation, a Virginia corporation, with its principal office in the City of Norfolk in the State of Virginia (hereinafter called the "Corporation"), for value received, hereby promises to pay to bearer, or, if this Note be registered, to the registered holder hereof, — Dollars ($—) in gold coin of the United States of America of or equal to the present standard of weight and fineness, on the thirtieth day of ——, 19—, at the principal office of Metropolitan Trust Company of the City of New York (hereinafter called the "Trustee"), in the Borough of Manhattan, City and State of New York,

and to pay interest thereon from September 30, 1922, in like gold coin, at the rate of seven per cent (7%) per annum, at said office, quarterly on the thirtieth days of December, March, June and September in each year, upon presentation and surrender of the coupons hereto annexed, as they severally mature.

This is one of an authorized issue of Notes of the Corporation of an aggregate principal amount not to exceed $1,500,000, known as "Seven Per Cent. Sinking Fund Serial Gold Notes," all of like date and tenor save as to their [fol. 25] maturities and all issued or to be issued under an Indenture, dated September 30, 1922, duly executed and delivered by the Corporation to said Metropolitan Trust Company of the City of New York, Trustee (hereinafter called the "Indenture"). The Notes are in denominations of $1,000 and multiples thereof. Reference is hereby made to the Indenture for a description of the rights of the holders and owners of such Notes and coupons thereunder and for the terms and conditions upon which such Notes are issued, to all of which the holder or registered owner hereof assents by acceptance hereof.

As provided in the Indenture, the Notes are subject to redemption, in whole or in part, at the option of the Corporation, on any interest date upon thirty days' published notice, at the principal amount thereof and accrued interest and a premium of two per cent (2%) on such principal amount if such redemption occurs before September 30, 1923, or a premium of one per cent (1%) on such principal amount if such redemption occurs after said September 30, 1923.

The Indenture provides that the sum of $50,000 shall be deposited on the twenty-fifth day of each calendar month, beginning October 25, 1922, with the Trustees as a Sinking Fund to be used for the payment of Notes in the order of their maturity, save as otherwise provided in said Indenture.

In case an event of default as defined in the Indenture shall happen, the principal of the Notes may become or be declared due and payable in the manner and with the effect provided in the Indenture.

This Note shall pass by delivery unless registered in the name of the owner on the books of registry of the Corporation at the principal office of the Trustee in the Borough of Manhattan, City and State of New York, such registration being noted hereon by the Registrar. After registraion of ownership duly noted hereon, no transfer shall be valid unless made at said office by the registered owner in person or by attorney duly authorized and similarly noted hereon, but this Note may be discharged from registration by transfer to bearer duly noted hereon, and thereupon transferability by delivery shall be restored. This Note may again from time to time be registerd or [fol. 26] transferred to bearer as before. No such registration shall affect the negotiability of the coupons annexed hereto which shall continue to be transferable by delivery.

Except as against Harry Levy, Esq., the largest stockholder of the corporation and who guarantees the payment of the Notes as to principal and interest, no recourse shall be had either directly or through the Corporation or otherwise for the payment of the principal or interest of this Note against any incorporator or any present or future stockholder, officer or director of the Corporation, whether by virtue of any statute or by the enforcement of any assessment or penalty or otherwise, all such liability being expressly released by the holder or owner hereof by the acceptance of this Note, and being likewise waived and released by the terms of the Indenture.

This Note shall not be valid or become obligatory for any purpose until the certificate authenticating the same hereon endorsed shall have been executed by the Trustee.

In Witness Whereof, American Home Furnishers Corporation has caused this Note to be signed in its name by its President or one of its Vice-Presidents and its corporate seal to be hereunto affixed and attested by its Secretary or one of its Assistant Secretaries, all as of the thirtieth day of September, 1922.

American Home Furnishers Corporation, by —— ——, Vice-President.

Attest: —— ——, Secretary.

(Form of Interest Coupon)

No. —. $—.

On the thirtieth day of ——, 19—, American Home Furnishers Corporation will pay to bearer — dollars ($—) in gold coin of the United States of America, at the principal office of Metropolitan Trust Company of the City of New [fol. 27] York, in the Borough of Manhattan, City and State of New York, being three months' interest then due on its Seven Per Cent Sinking Fund Serial Gold Note, Series —, No. —, unless said Note shall have been called for previous redemption.

—— ——, Treasurer.

(Form of Trustee's Certificate)

The within Note is one of the Notes referred to in the Indenture therein mentioned.

Metropolitan Trust Company of the City of New York, Trustee, by —— ——, Assistant Secretary.

All things prescribed by law and by the by-laws of the Corporation to make such Notes, when executed by the Corporation and authenticated by the Trustee, the valid, binding and legal obligations of the Corporation, and to constitute this agreement a valid, binding and legal agreement to provide for the payment of said Notes, have been done and performed, and the creation and issue of said Notes and the execution and delivery of this agreement have been in all respects duly authorized.

In consideration of the premises, and in order to provide for the payment of the principal and interest of the Notes aforesaid, to be issued as hereinafter recited, and every part of said principal and interest, as the same shall become due and payable, according to the tenor of said Notes and the coupons attached thereto, all for the equal and pro rata benefit and security of the several persons, firms and corporations who or which shall or may be or become the holders respectively of any or all of said Notes without distinction or priority by reason of the date of issue and/or sale of any one or more of same, and to secure

to such holders, equally and without preference or priority of one Note over any other, the due and punctual payment of the principal thereof and the interest to become due thereon,

[fol. 28] This agreement witnesseth:

## Article First

### Form, Execution, Authentication and Delivery of Notes

Section 1. The aggregate principal amount of all the Notes, issued and outstanding hereunder at any one time, shall not exceed the sum of $1,500,000. The Notes shall be dated September 30, 1922; shall be known as the "Seven Per cent Sinking Fund Serial Gold Notes" of the Corporation and shall mature and be payable as follows:

$150,000 principal amount shall mature December 30, 1922, and shall be designated as Series "A."
$150,000 principal amount shall mature March 30, 1923, and shall be designated as Series "B."
$150,000 principal amount shall mature June 30, 1923, and shall be designated as Series "C."
$150,000 principal amount shall mature September 30, 1923, and shall be designated as Series "D."
$150,000 principal amount shall mature December 30, 1923, and shall be designated as Series "E."
$150,000 principal amount shall mature March 30, 1924, and shall be designated as Series "F."
$150,000 principal amount shall mature June 30, 1924, and shall be designated as Series "G."
$150,000 principal amount shall mature September 30, 1924, and shall be designated as Series "H."
$150,000 principal amount shall mature December 30, 1924, and shall be designated as Series "I."
$150,000 principal amount shall mature March 30, 1925, and shall be designated as Series "J."

The Notes shall bear interest at the rate of seven per centum (7%) per annum, payable quarterly on the thirtieth days of December, March, June and September in each year from the date thereof to maturity. The Notes and

coupons to be issued hereunder shall be substantially of the tenor and effect hereinbefore recited. The Notes shall be in denominations of $1,000 and multiples thereof, and the Notes in denominations of $1,000 shall be numbered re-
[fol. 29] spectively from M-1 consecutively upwords, the Notes in denominations of $5,000 shall be numbered respectively from F-1 consecutively upwards; the Notes in denominations of $10,000 shall be numbered respectively from T-1 consecutively upwards; the Notes in denominations of $25,000 shall be numbered respectively from V-1 consecutively upwards; and the Notes in any other denominations shall be numbered respectively from O-1 consecutively upwards.

The Notes shall be executed on behalf of the Corporation by its President or one of its Vice-Presidents and shall be sealed with its corporate seal, attested by its Secretary or an Assistant Secretary. The coupons to be attached to the Notes shall be authenticated by the facsimile signature of the Treasurer or an Assistant Treasurer of the Corporation. Notes and coupons appertaining thereto, when the Notes shall have been duly authenticated by the Trustee, shall be deemed binding for all purposes, without regard to the fact that the officers executing the Notes, or the officer whose fac-simile signature shall appear on the coupons, or any of them, may have ceased to be such officers at the date of the actual authentication and issue of said Notes. No Note shall be entitled to any right or benefit under this indenture, unless there shall be noted or endorsed thereon the certificate of the Trustee substantially in the form hereinbefore recited, and such certificate on any Note or temporary Note issued by the Corporation shall be conclusive evidence that it is duly issued hereunder and that the holder is entitled to the benefit of this Indenture. Before certifying any Note, the Trustee shall cut off all matured coupons thereon and cancel and deliver them to the Corporation.

Section 2. Upon the execution of this Indenture, the Corporation shall execute and the Trustee shall certify Notes of the aggregate principal amount of $1,500,000, as hereinabove described. The Notes so certified shall be delivered by the Trustee at one time or from time to time to or upon

the written order of the President, a Vice-President or the Treasurer of the Corporation. An order purporting to direct the certification and delivery of said Notes, or any part thereof, believed by the Trustee to be genuine, shall be conclusive authority and full protection to the Trustee for the certification and delivery thereof, as and when [fol. 30] therein requested, and the Trustee shall be under no obligation to receive or to see to the application of the proceeds thereof.

Section 3. Upon the surrender to the Trustee by the holder thereof (and, if registered, accompanied by a proper instrument of assignment and transfer in blank) of a Note or Notes issued hereunder, with all unmatured coupons attached, the Corporation shall execute and the Trustee shall certify and deliver to such holder a Note or Notes of the same maturity and in the same aggregate principal amount; and in denominations of $1,000 and multiples thereof as such holder may request, with all unmatured coupons attached.

The Corporation, as a condition precedent to the right of any holder to have such Note exchanged, as provided in this Section 3, may require such holder, in order to reimburse the Corporation in respect of the cost of effecting such exchange, to pay to the Trustee, for account of the Corporation, such reasonable sum as the Corporation may require, not in excess of one dollar ($1) for each Note delivered to such holder upon any such exchange, in addition to any stamp tax or other governmental charge on such exchange.

All Notes which may be surrendered to the Trustee for exchange, as provided above, together with all coupons appertaining thereto, shall forthwith be cancelled by the Trustee and delivered to the Corporation.

Section 4. Upon receipt by the Corporation and by the Trustee of evidence satisfactory to them of the loss, destruction or mutilation of any Note or coupon issued hereunder and of indemnity satisfactory to them and (if mutilated) upon the surrender and cancellation of such mutilated Note or coupon, the Corporation may execute and, upon its request, the Trustee shall certify and deliver a new Note or coupon of like tenor, bearing the same serial number, in

lieu of and in substitution for such lost, destroyed or mutilated Note or coupon.

Section 5. Until definitive Notes can be prepared, the Corporation may execute and, upon the request of the Corporation, the Trustee shall certify and deliver, in lieu of such definitive Notes, temporary Notes (which may be printed or typewritten) of the denominations of $1,000 or of any multiple thereof, substantially of the tenor and [fol. 31] effect of the Notes hereinbefore recited, but without coupons, and with appropriate omissions, variations and insertions. The temporary Notes may be exchanged, upon surrender thereof at the office of the Trustee, for a like aggregate principal amount of definitive Notes, of like maturities, of the denominations authorized in Section 1 of this Article. Upon surrender of such temporary Notes for exchange for definitive Notes, the Corporation, at its own expense, shall prepare and execute and, upon cancellation of such surrendered temporary Notes, the Trustee shall certify and deliver, in exchange therefor, definitive Notes of like aggregate principal amount, of like maturities, of such denomination or denominations authorized in Section 1 of this Article as the holder may request. Until so exchanged, the temporary Notes shall, in all respects, be entitled to the same benefits of this Indenture as the definitive Notes and interest, when and as payable, shall be paid and endorsed thereon, on presentation thereof for that purpose. The temporary Notes may be exchanged for temporary Notes, of like maturities, of any other denomination authorized in this section, upon the terms and conditions provided in Section 3 of this Article for exchange of definitive Notes for definitive Notes of other denominations.

Section 6. The Federal Tax required by law to be paid upon the issuance of the Notes shall be paid by the Corporation and stamps, properly evidencing the payment thereof, shall be affixed by the Corporation to this Indenture at the time of the execution and delivery thereof and shall be duly cancelled as required by law; and a statement that such taxes have been paid and that such stamps have been duly affixed to this Indenture and have been duly cancelled according to law shall be endorsed upon the de-

finitive Notes and upon any temporary Notes issued in accordance with the terms of this Indenture.

Section 7. The Corporation may, prior to the sale of any Notes authenticated by the Trustee and delivered to the Corporation hereunder, pledge such Notes to secure any indebtedness or obligation of the Corporation, and the Corporation may purchase or re-purchase any Notes theretofore sold by it and may, at the time of such sale, agree to purchase or re-purchase the same; and any Notes re-[fol. 32] leased from such pledge, by payment of the debt or performance of the obligation or otherwise, and any Notes purchased or re-purchased by the Corporation may be again so pledged or so sold or otherwise re-issued or disposed of by the Corporation as often as the Corporation may acquire or re-acquire the same and all such Notes shall continue to be entitled to the security of this Indenture.

## Article Second

## Transfer and Registration of Notes

Section 1. So long as any of the Notes issued hereunder shall remain outstanding, the Corporation will maintain and keep, at the principal office of the Trustee, in the Borough of Manhattan, City of New York, sufficient books of registry of the Notes and, upon presentation for such purpose, the Corporation will, subject to such reasonable requirements as it may prescribe, register therein any of the Notes, as to the payment of principal only. The Trustee for the time acting as such hereunder is hereby appointed as the agent of the Corporation with the title of "Registrar," for the registration of the principal of the Notes and for their transfer and discharge from Registration.

Section 2. The holder of any Note may have the ownership of the principal thereof registered on said books, such registry being noted on the Note by the Registrar, after which no transfer shall be valid unless made on said books by the registered owner in person or by his attorney duly authorized and likewise noted on the Note; but the same may be discharged from registry by being in like manner transferred to bearer, after which said Note shall be trans-

ferable by delivery. Such registration, however, shall not affect the negotiability of the interest coupons, but every such coupon shall continue notwithstanding to be transferable by delivery and shall remain payable to bearer. The Corporation, at its option, may require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge in connection with any such registration or transfer.

[fol. 33] Section 3. The ownership of Notes registered as to principal as aforesaid other than to bearer shall be proved by the books for the registration of said Notes provided for in this Article Second and said proof shall be conclusive in favor of the Trustee and the Corporation. Payments of or on account of the principal of any Note so registered shall be made only to or upon the order of such registered owner thereof and such payments shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

## Article Third

### Particular Covenants of the Corporation

The Corporation covenants and agrees with the Trustee as hereinafter in this Article set forth:

Section 1. It will duly and punctually pay the principal and interest of said Notes at the times and in the manner therein specified.

Section 2. So long as any of the Notes are outstanding, the Corporation will not mortgage, pledge or otherwise encumber any of its real or personal property or interest in real or personal property owned at the date hereof or hereafter acquired, except as hereinafter provided. But this covenant shall not prevent the Corporation from:

(a) Pledging or re-pledging in the regular conduct of its business any of its accounts receivable, notes, acceptances, liquid assets, stocks, bonds or other securities, as security for loans made to it in the regular conduct of its business, or in connection with the acquisition by purchase or otherwise of all or part of the capital stock or properties of such

corporations, associations or other agencies as may be useful or necessary in the conduct or prosecution of its business.

(b) The endorsement, negotiation, pledge and/or sale, under any continuing agreement or arrangement, of any choses in action heretofore or hereafter received by it from customers.

[fol. 34] (c) Creating any mortgage or other lien on real estate hereafter acquired, to secure the payment of such part of the purchase price thereof as shall not, together with the total amount of any other mortgage or lien then existing on such real estate, exceed 75% of the fair value of the real estate so acquired.

(d) Acquiring real estate subject to any mortgage, lien or encumbrance thereon existing at the time of such acquisition, providing said mortgage, lien or encumbrance does not secure an indebtedness to an amount in excess of 75% of the fair value of the real estate so acquired.

Section 3. It will promptly pay, satisfy and discharge any and all of its debts (whether secured or unsecured and of whatsoever character), obligations and liabilities and any and all lawful taxes, levies, assessments and governmental charges whatsoever which may be imposed upon its franchises, properties, income or profits, or any part thereof, and any and all other legal claims and demands which may at any time be made against it; provided, however, that nothing in this Section contained shall require the Corporation to pay, satisfy or discharge any such debt, obligation, liability, tax, levy, assessment, charge or claim so long as in good faith the validity thereof shall be contested and that nothing in this Section contained shall prevent the Corporation from renewing and extending from time to time, and at any time, in the regular conduct of its business, any debts or obligations now or hereafter contracted, provided, however, that the Corporation shall promptly apply at least the sum of $1,000,000 out of the sale of the Notes issued hereunder toward the payment of its now existing current liabilities.

Section 4. It will do or cause to be done all things necessary to and will diligently preserve and keep or cause to be

preserved and kept, in full force and effect, such of the rights, good-will, trade names, privileges and franchises of the Corporation now existing or which may hereafter be granted or conferred by law or otherwise, as may be useful in or for the conduct of its business.

Section 5. It will not make or cause or permit to be made [fol. 35] any sale or contract for the sale of all or substantially all of its properties, rights, privileges or franchises, or any contract or agreement for the operation thereof by any other company, or enter into any consolidation or merger or contract for consolidation or merger with any other company, unless it be a condition of such sale, contract, agreement or consolidation, that this agreement and the benefits hereof shall remain inviolate and that the purchaser, assignee or successor in interest of the Corporation or the consolidated Corporation, as the case may be, shall pay the Notes issued hereunder and the interest coupons appertaining thereto, according to the terms of this agreement and of said Notes and coupons, and shall in all respects, perform and observe the terms and covenants of this agreement and of said Notes and coupons.

Section 6. It will at all times maintain its current assets at an amount at least equal to 175% of the Corporation's current liabilities including the principal amount of all Notes issued and outstanding hereunder. The terms "current liabilities" and "current assets" are herein defined as follows for the purposes of this Indenture:

The term "current liabilities" is defined to include all items which, under good accounting practice as of the date of this Indenture would appear upon the liability side of a balance sheet of the Corporation, except:

(a) Capital stock of the Corporation.

(b) Reserves (other than for accrued liabilities).

(c) Surplus and surplus accounts.

(d) Bonds or notes secured by mortgage or deed of trust upon real estate and improvements thereon, and maturing three or more years after the date of this Indenture.

(e) Contingent liability upon choses in action negotiated as provided in Section 2 of this Article Three.

The term "current assets" is defined to include only:

[fol. 36] (a) Cash in bank, Cash in the sinking fund hereunder, Cash in sinking fund for any preferred stock of this Corporation, and Cash on hand, good accounts, good and collectible bills, choses in action, acceptances and notes receivable, of any person, firm, corporation, government or body politic, accrued interest, accrued rent or accrued royalties receivable, merchandise both manufactured and in process and raw materials, deferred charges to operations, prepaid insurance, prepaid interest and other prepaid necessary expenses of the business.

(b) The excess of "current assets" as defined in the preceding paragraph (a) over "current liabilities" as hereinabove defined, of any one or more subsidiary corporations, so long as the entire capital stock of such subsidiary corporation or corporations, outstanding from time to time, is owned by the Corporation.

In the event of the pledge, negotiation and/or hypothecation of any of said assets the excess in amount of such assets over the liability of the Corporation incident thereto shall be deemed a "current asset" for the purposes of this instrument.

All questions of accounting practice arising under this Indenture shall be conclusively determined by the certificate of any chartered or certified public accountants (who may be the auditors of the Corporation), provided they are acceptable to the Trustee.

Section 7. The Corporation will at all times maintain a net worth of at least the sum of $3,000,000 and in determining said net worth there shall be consolidated in a single balance sheet with said "current assets" and "current liabilities" as heretofore defined the net difference between the fair value of all assets of the Corporation not included in said definition of "current assets" and the amount of liabilities excepted in said definition of "current liabilities" under the foregoing clause (d) of said exceptions.

Section 8. So long as any of the Notes are outstanding, the Corporation will cause an inventory of its assets to be taken as of December 31 and June 30 of each year, beginning with December 31, 1922, and will render to the Trustee

within sixty days thereafter, in each instance, a balance [fol. 37] sheet as of such dates showing in detail its assets and liabilities, certified as correct by chartered or certified public accountants, and so stated as to show clearly the current assets and the liabilities, as herein defined, of the Corporation at the date to which such balance sheet relates.

Such balance sheets and any further statements in writing requested by the Trustee in connection herewith may be accepted by the Trustee as satisfactory and conclusive evidence as to the facts therein stated, but the Trustee may, at any time in its discretion, cause to be made such independent investigation thereof as it may see fit. The expense of such investigation shall be paid by the Corporation or if paid by the Trustee, shall be repaid by the Corporation upon demand. The Trustee shall not, however, be under any duty to demand any further statements in writing in connection with any balance sheet submitted to it by the Corporation or to make any independent investigation in the premises.

Section 9. It will, at any time and from time to time hereafter, make, do execute and deliver all such further agreements, acts, deeds and things as shall be necessary or reasonable to effectuate the intention of these presents and to provide for the payment of the Notes and the interest thereon according to the intent and purposes hereof.

Section 10. It will from time to time, on demand, pay to the Trustee reasonable and agreed compensation for its services hereunder (which shall not be limited to the compensation provided by law for trustees of an express trust) and reasonable compensation for the services of counsel, solicitors, agents and employees engaged by the Trustee in connection with the discharge of the duties herein imposed upon the Trustee.

Section 11. It will not become liable as maker, endorser, guarantor or otherwise for the accommodation of any person, firm or corporation unless such accommodation is in the regular course of business of the Corporation and for its benefit, or for the benefit of a corporation of which the Corporation owns at least fifty-one per cent (51%) of the outstanding capital stock at the time of such accommodation.

[fol. 38] Section 12. This Indenture shall not be deemed or construed to prevent:

(a) The sale or other disposition of all or any part of the stock or bonds owned or hereafter acquired by the Corporation; or the sale or other disposition of all or any part of any capital stock now or hereafter issued by the Corporation; the discontinuance by the Corporation of such part of its business now conducted by it as may be unnecessary or unprofitable; or the organization or acquisition (by purchase or otherwise) of all or part of the capital stock or properties of such corporations, associations or other agencies as may be useful or necessary in the conduct or prosecution of its business.

(b) The reorganization of the Corporation under the laws of the United States of America or of any State thereof; the merger or consolidation of the Corporation with any corporation organized or to be organized under the laws of the United States of America or of any State thereof; the sale or lease of all or substantially all of the property, rights, privileges or franchises of the Corporation to any corporation organized under the laws of the United States of America or of any State thereof,—provided that any such reorganization, merger, sale or lease shall be subject to the provisions of Section 5 of this Article.

Section 13. The Corporation further covenants and agrees that it will faithfully carry out and perform all the duties and obligations on its part to be performed arising out of or connected with any undertaking or contract, existing from time to time, between it and the Industrial Finance Corporation, hereinbefore referred to, for the financing of its current sales of merchandise through the Morris Plan of Retail Trade Acceptances.

## Article Fourth

## Redemption

Section 1. All or any part of the Notes then outstanding may be redeemed by the Corporation on any interest date prior to their maturity, at the option of the Corpora- [fol. 39] tion, on thirty days' previous notice, to be given

as hereinafter provided, at 102% of the principal amount thereof together with accrued interest thereon to the date fixed for redemption if such redemption occurs on or before September 30, 1923; or at 101% of the principal amount thereof, together with accrued interest thereon to the date fixed for the redemption, if such redemption occurs after September 30, 1923.

Notice of the election of the Corporation to redeem any of the Notes shall be given by publication thereof at least once in each week for four successive calendar weeks in a newspaper published in the City and State of New York, the first publication to be made at least thirty days before said redemption date and, if any of the Notes so to be redeemed are registered, the Corporation shall cause a copy of said notice, properly enveloped, postage paid and addressed to the registered holders respectively at their post office addresses last registered on the books of registry to be mailed to said registered holders at least thirty days prior to the date of redemption specified in said notice; but such mailing shall not be a condition precedent to such redemption and failure to mail such notice shall not affect the validity of the proceedings for the redemption of any of such Notes. In case less than all the oustanding Notes are to be redeemed the Corporation may from time to time redeem all of the outstanding Notes maturing on the same date or dates and in case less than all of the Notes of the same maturity date are to be redeemed, at any time, the Notes to be redeemed shall be drawn by lot by the Trustee and such notice shall state the serial numbers of the Notes so drawn. Each such drawing shall include Notes of each of the denominations then outstanding, and, of the aggregate principal amount of Notes of each such denomination then outstanding, and of the same maturity date, there shall be drawn an aggregate principal amount in the proportion in which the aggregate principal amount of Notes of said maturity date of such denomination then outstanding bears to the aggregate principal amount of the Notes of said maturity date of all denominations then outstanding, with such adjustment for amounts which cannot be so apportioned and with such other conditions as to the method of drawing as the Trustee, in its discretion, may determine.

[fol. 40] Section 2. The Corporation shall deposit with the Trustee, on or before the date of redemption specified

in said notice, proof by affidavit to the satisfaction of the Trustee, that said notice of redemption has been given in the manner aforesaid and cash to the amount of the principal of the Notes called for redemption, together with accrued interest on said Notes to the date fixed for redemption, plus the amount of the premium to be paid on the Notes as herein provided. Provided such deposit shall have been made and notice given, and proof thereof deposited with the Trustee, as aforesaid, all interest on the Notes so called for redemption shall cease on the date of redemption specified and each such Note and all accrued interest thereon shall be deemed to have been paid and discharged on said date and shall cease to be entitled to any benefits under this Indenture and shall be deemed to be no longer outstanding hereunder; and all coupons appertaining to any such Notes maturing after the date specified for such redemption, shall be null and void and every holder of such Notes thereafter shall be entitled to look for payment thereof only to the Trustee, which shall be liable only in respect of the sum deposited with it to meet such Notes.

Section 3. In case any question shall arise as to whether any such notice shall have been given, as above provided, and such payment made to the Trustee, such question shall be decided by the Trustee and its decision shall be final and binding upon all parties.

Section 4. All payments made under this Article by the Trustee shall be made in each case against the surrender of the Notes and of all coupons appertaining thereto maturing after the date fixed for redemption.

The Notes and coupons so surrendered shall be cancelled by the Trustee and by it shall be delivered to the Corporation.

## Article Fifth

## Sinking Fund

Section 1. The Corporation covenants and agrees that on the Twenty-fifth day of October, 1922, and on the twenty-[fol. 41] fifty day of each successive calendar month thereafter in successive years up to and including the twenty-fifth day of March 1925, it will segregate, set aside and deposit with the Trustee, as and for a sinking fund for the

payment of outstanding Notes as hereinafter in this Article provided the sum of $50,000.

Section 2. Upon the deposit with the Trustee herein, on or before any quarterly interest date, of an amount sufficient to pay the interest to fall due upon such date upon all the outstanding Notes issued pursuant to this Indenture, and upon there being on deposit with the Trustee, as sinking fund hereunder, an amount sufficient to pay the principal of all the outstanding Notes to fall due as to the principal on such date, the Trustee shall apply said sinking fund, so far as necessary, to the payment of the principal of all of said Notes which shall become due as to principal on said date, and the balance, if any, remaining in said sinking fund, shall be applied upon the same conditions towards the payment of the principal of such Notes as fall due upon the succeeding interest date, and so on.

In the event of the failure of said conditions precedent to the foregoing application of said sinking fund, at any time, and from time to time, the Trustee shall hold the same for the equal and pro rata security of all the outstanding Notes issued pursuant to this indenture pending compliance by the Corporation with said conditions precedent, and thereupon apply said sinking fund as hereinabove provided, but upon the happening of any event of default by the Corporation, as defined in Article Sixth of this Indenture, and continuance of such default as therein provided, the amounts in said sinking fund deposited with the Trustee, shall be applied in the same manner provided in said Article Sixth for the application of any other monies collected by the Trustee pursuant to the terms of said Article Sixth.

Section 3. The Trustee is relieved from all duty or liability in connection with the supervision or enforcement of the covenants and provisions of this Article.

[fol. 42]

## Article Sixth

### Remedies Upon Default

Section 1.—In case—

(2) Default shall be made in the payment of any principal of any of the Notes, as and when the same shall become due; or

(2) Default shall be made in the payment of any interest upon any of the Notes, as and when the same shall become due, and such default shall continue for a period of 90 days; or

(3) Default shall be made in the performance or observance of the covenant, promise or condition of the Corporation to maintain its current assets at an amount at least equal to 175% of its current liabilities as defined and provided in Section 6 of Article Third hereof, and/or to maintain a net worth in an amount of at least $3,000,000, as defined and provided in Section 7 of Article Third hereof, and such default shall continue for a period of ninety (90) days after notice thereof, in writing, shall have been given to the Corporation by the Trustee or by the holders of 20% in principal amount of the Notes then outstanding, specifying such default and requiring the same to be remedied, and such default shall not have been made good or secured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate made therefor; or

(4) Default shall be made in the performance or observance of any other covenant, promise or condition by this agreement required to be kept or performed by the Corporation, and such default shall continue for a period of 60 days after notice thereof in writing shall have been given to the Corporation by the Trustee or by the holders of 20% in principal amount of the Notes then outstanding, specifying such default and requiring the same to be remedied, and such default shall not have been made good or secured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate made therefor; or

[fol. 43] (5) The financing of current sales of merchandise by the Corporation through the Morris Plan of Retail Trade Acceptance hereinabove referred to shall cease (and the Corporation covenants immediately to notify the Trustee of such cessation, but the Trustee may exercise any of its rights by reason of such cessation without receiving such notice from the Corporation); or

(6) By the decree of a Court of competent jurisdiction, the Corporation shall be adjudicated a bankrupt, or, by order of such Court, a receiver shall be appointed of the

property of the Corporation, and any such decree or order shall continue in effect for a period of 60 days; or

(7) The Corporation shall file a petition in voluntary bankruptcy or shall make an assignment for the benefit of creditors;

then, and in each and every such case during the continuance of such event of default, the Trustee may and, upon the written request of the holders of 10% in principal amount of the Notes then outstanding, shall declare the principal of all the Notes then outstanding (if not already due and payable) to be due and payable, and, upon any such declaration, the same shall become and be immediately due and payable.

Section 2. The provisions of Section 1 of this Article and all provisions of this Indenture respecting default or acceleration of maturity of the Notes are, however subject to the condition that if at any time after the principal of the Notes shall be so declared due and payable and before any sale of property shall have been had under any judgment that shall be entered for the recovery of the indebtedness evidenced by the Notes or any thereof, all the covnants and conditions of this Indenture shall have been fully performed and observed, so that no default or breach shall then exist with respect to any thereof and all arrears of interest upon all the Notes issued hereunder and then outstanding, with interest at the rate of 7% per annum on overdue instalments of interest, and all expenses incurred in connection with such default shall have been paid, [fol. 44] the holders of a majority in principal amount of the Notes then outstanding hereunder, by written notice to the Corporation and to the Trustee, may rescind and annul such declaration and its consequences; but no such recission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereon.

Section 3. The Corporation expressly covenants that in case:

(a) Default shall be made in the payment of any interest on any of the Notes at any time outstanding, and such default shall continue for the period of 90 days; or

(b) Default shall be made in the payment of the principal of any of the Notes when the same shall become due and payable, whether upon maturity thereof by their own terms or upon declaration as authorized by this Indenture;

then, upon demand by the Trustee, the Corporation will pay to the Trustee, for the benefit of the holders of the Notes issued hereunder and then outstanding and the coupons appertaining thereto, the whole amount that then shall have become due and payable upon said Notes and coupons for principal and interest, with interest at the rate of 7% per annum upon all such overdue principal and instalments of interest. In case the Corporation shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as Trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid and may enforce any such judgment against the Corporation and collect the moneys adjudged to be payable out of the properties of the Corporation, wherever situate, in any manner provided by law.

Section 4. Any moneys collected by the Trustee shall be applied as follows: First, to the payment of costs and expenses, including reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all expenses, liabilities, and advances made or incurred by the Trustee; and, second, toward payment of the amounts then due and unpaid upon the Notes and coupons in respect of which such [fol. 45] money- shall have been collected, ratably and without any preference or priority of any kind (subject to the provisions of Section 9 of this Article), according to the amounts due and payable upon such Notes and coupons, respectively.

Section 5. No holder of any Note or of any coupon appertaining thereto shall have any right to institute any suit, action or proceeding whatsoever, either in equity or at law, for the collection of any sum due thereon from the Corporation for principal or interest, or for the appointment of a receiver or for any other remedy hereunder or in respect of such Notes or coupons unless and until such holder previously shall have given to the Trustee written notice of a default and of the continuance thereof as hereinbefore provided, and unless also the holders of 25% in

principal amount of the Notes then outstanding shall have made written request upon the Trustee and shall have afforded to it a reasonable opportunity to institute such action, suit or proceedings in its own name, and unless, also, they shall have offered to the Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for thirty days after the receipt by it of such notice, request and offer of indemnity shall have neglected or refused to institute any such action, suit or proceedings; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action or for any remedy hereunder; it being understood and intended and being expressly covenanted by the taker and holder of every Note issued hereunder and of every coupon appertaining thereto, and of every other taker or holder with the Trustee, that no one or more holders of Notes or coupons shall have any right in any manner whatever to affect, disturb or prejudice the rights of the holders of any other of the Notes or coupons or shall in any manner or way obtain or seek to obtain priority over or preference to any other such holder, or shall enforce any right hereunder, or under or in respect of the Notes or coupons, or any of them, except in the manner herein provided and for the equal, ratable and common [fol. 46] benefit of all holders of such outstanding Notes and coupons.

Section 6. No delay or omission of the Trustee or of any holder of any of the Notes or coupons to exercise any right or power accruing upon any default occur-ing and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Article to the Trustee or to the holders of Notes may be exercised from time to time and as often as shall be deemed expedient by the Trustee or by the holders of Notes.

Section 7. The Corporation will not at any time insist upon or plead or in any manner whatever claim or take

the benefit or advantage of any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Indenture; and the Corporation hereby expressly waives all benefit or advantage of any such law or laws and covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but will suffer and permit the execution of every power as though no such law or laws had been made or enacted.

Section 8. No coupon belonging to any Note which in any way at or after maturity shall have been transferred or pledged separate and apart from the Note to which it relates shall, unless accompanied by such Note, be entitled in case of default hereunder to any benefit of or from this Indenture, except after the prior payment in full of the principal of all the Notes and of all coupons not so transferred or pledged. In case the time for payment of any coupons shall be extended, whether or not such extension be by or with the consent of the Corporation, such coupon shall not be entitled, in case of default hereunder, to any benefit of or from this Indenture, except after the prior payment in full of the principal of the Notes and of all coupons the time for payment of which shall not have been so extended, with interest as provided in Section 3 of this Article.

[fol. 47]

## Article Seventh

### Requests of Holders of Notes

Section 1. Any request or other instrument provided by this Indenture to be signed and executed by holders of Notes may be in any number of concurrent instruments of similar tenor and may be signed and executed in person or by agent appointed in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent, and of the holding by any person of any of the Notes, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and of the Corporation with regard to due action taken by them or either of them under such request or other instrument, if made in the manner specified in this Article.

Section 2. The fact and date of the execution by any person of any such request or other instrument or writing may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the State of New York, that the person whose name was subscribed to such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution.

Section 3. The fact of the holding of any unregistered Notes by any person executing any such request or other instrument as a holder of Notes and the amount and distinctive numbers of such unregistered Notes held by such person and the date of his holding the same may be proved by a certificate executed by any trust company, bank, bankers, or other depositary (wherever situate), if such certificate shall be deemed by the Trustee to be satisfactory, showing therein that at the date therein mentioned such person had on deposit with or exhibited to such depositary the Notes described in such certificate.

Section 4. The Corporation at all times until the payment of the principal of the Notes either will keep an office or agency in the Borough of Manhattan in the City of New York, where notices and demands in respect of the Notes [fol. 48] and coupons may be served, and by written notice designate such office or agency to the Trustee, or will designate, by written notice to the Trustee, a bank or trust company in said Borough for such purpose. In default of any such office or agency or of such designation, demands may be made and notices may be served at the principal office, in said Borough, of the Trustee.

## Article Eighth

## Satisfaction of This Indenture

Section 1. If and when all the Notes issued hereunder shall become due and payable, the Corporation well and truly shall pay or shall cause to be paid the whole amount of the principal (and premium, if any) and interest due upon all of the Notes then outstanding hereunder, or shall provide for such payment by depositing with the Trustee, for the payment of such Notes and coupons, the entire

amount due thereon for principal (and premium, if any) and interest, and also shall pay or shall cause to be paid all other sums payable hereunder by the Corporation, and well and truly shall keep and perform all things herein required to be kept and performed by it, according to the true intent and meaning of this Indenture, then and in that event this Indenture shall cease to be of further effect and the Trustee, on demand of the Corporation and at its cost and expense, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture.

Section 2. In the event that the Corporation shall deposit with the Trustee on or before the date of maturity of any series of the Notes outstanding hereunder and designated by the Corporation a sum sufficient to pay the principal of all Notes maturing on said date and all accruing interest thereon until maturity, and shall expressly direct the Trustee to apply the amount so deposited to the payment of said series of Notes of the said designated maturity, all interest on the said Notes maturing on such date shall cease at the date of maturity and each Note then issued and outstanding and so provided for and all accruing interest thereon shall be deemed to have been paid and discharged on said date and shall cease to be entitled to any benefits [fol. 49] under this Indenture; and every holder of each such Note and unpaid coupon thereafter shall be entitled to look for payment thereof only to the Trustee, which shall be liable only in respect of the sum deposited with it to meet such Notes and coupons. No holder of any Note or coupon shall be entitled to interest on such deposit with the Trustee.

## Article Ninth

## Concerning the Trustee

Section 1. The Trustee hereby accepts the duties imposed upon it as Trustee under this Indenture and agrees to execute the same upon the terms and conditions hereof, including the following, to which the parties and the holders of the Notes agree:

The Trustee shall be under no obligation at any time to record, file or refile this Indenture, or to give any notice to anyone of the existence hereof.

The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall have been selected with reasonable care; or for anything whatever in connection with this Indenture or its duties hereunder except wilful misconduct or gross negligence. The Trustee shall not be under any obligation to take any action towards the execution or the enforcement of its duties hereunder which, in its opinion, will be likely to involve it in expense or liability, unless one or more of the holders of the Notes issued hereunder shall, as often as required by the Trustee, furnish indemnity satisfactory to the Trustee against such expense or liability; nor shall the Trustee be required to take or be deemed to have notice of any default hereunder unless notified in writing of such default by the holders of at least 10% in principal amount of the Notes then outstanding, or to take any action in respect of any default unless requested to take action in respect thereof by a writing signed by the holders of not less than 25% in principal amount of the Notes then outstanding, and tendered satisfactory indemnity as aforesaid, anything herein contained to the contrary notwithstanding; but the foregoing provisions of this Section are intended only for [fol. 50] the protection of the Trustee and shall not be construed to limit or affect any discretion or power given to the Trustee by any provision of this agreement to determine whether or not it shall take action in respect of any default, or any power or discretion of the Trustee to take action in respect of any default without such notice or request from holders of Notes.

Any action taken by the Trustee at the request of any person who at the time is the holder of any Note or Notes shall be conclusive and binding upon all future holders of the same Note or Notes.

The Trustee shall incur no liability to anybody in acting upon any Note, notice, request, consent, certificate, document, or paper believed by it to be genuine and to have been signed by the proper person.

The recitals and statements herein and in the Notes contained are and shall be taken as statements by the Corporation alone, and shall not be considered as made by or as imposing any obligation or liability upon the Trustee, nor

shall the Trustee be held responsible for the legality or validity of the Notes under any provision of the laws of Virginia or New York or elsewhere.

The Trustee may become the owner of Notes issued hereunder with the same rights which it would have if it were not Trustee and at any public sale of property of the Corporation in enforcement of the debt evidenced by the Notes may become the purchaser thereof without any accountability or responsibility except for payment of the purchase price. Any moneys received by the Trustee under any provision of this Indenture may be treated by it until it is required to pay out the same conformably hereto, as a general deposit, without any liability for interest, save as may be agreed upon between the Corporation and the Trustee.

The Trustee in its discretion may advise with legal counsel to be selected and employed by it at the expense of the Corporation, and anything done or suffered in good faith by the Trustee in accordance with the opinion of counsel shall be conclusive in favor of the Trustee as against the Corporation and on all holders of Notes issued hereunder. The Trustee in the distribution of any moneys paid to or collected by it hereunder shall have a prior right for the payment of its compensation and of all expenses and disbursements necessarily incurred or made by it.

[fol. 51] The Trustee shall be under no duty or obligation to see to the application of the proceeds of any Note issued under this agreement.

In all cases where this Indenture does not make other express provisions as to the evidence on which the Trustee may act or refrain from acting, the Trustee shall be protected in acting or refraining from acting under any provision of this Indenture in reliance upon the statements contained in a certificate filed with it and signed by the President, a Vice-President, Secretary, Treasurer or Comptroller of the Corporation, and the Trustee is authorized to accept the statements contained in any such certificate as conclusive evidence of the truth thereof and no investigation in respect thereto shall be required of it and all action taken by it upon the faith of such statements shall be conclusive and binding upon the Corporation and the holders of the Notes.

Any Corporation into which the Trustee may be merged or with which it may consolidate, or any corporation resulting from any merger or consolidation to which the Trustee may be a party, or any corporation succeeding to all or substantially all of the business of the Trustee, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further action on the part of any of the parties hereto, anything herein contained to the contrary notwithstanding.

Section 2. The Trustee or any Trustee hereafter appointed may resign from and be discharged of the duties created by this Indenture by giving notice thereof to the Corporation and to the holders of the Notes, by publication, at least twice a week for two successive weeks in at least one newspaper at that time published in the Borough of Manhattan, City of New York, State of New York.

Section 3. In case at any time the Trustee or any Trustee hereafter appointed shall resign or shall be removed or otherwise shall become incapable of acting, a successor or successors may be appointed by the holders of a majority in principal amount of the Notes issued hereunder then outs-anding, by an instrument or concurrent instruments signed by such holders or their attorneys in fact duly authorized; provided, nevertheless, and it is hereby agreed and declared, that in case at any time there shall be a [fol. 52] vacancy in the office of Trustee hereunder, the Corporation, by an instrument executed by order of its Board of Directors or its Executive Committee, shall appoint a Trustee to fill such vacancy until a new Trustee shall be appointed by the holders of Notes as herein authorized. Thereupon the Corporation shall publish notice of such appointment once a week for four successive weeks in a newspaper published in the Borough of Manhattan, City of New York and State of New York, but any new Trustee so appointed by the Corporation shall immediately and without further act be superseded by a Trustee appointed in the manner above provided by the holders of a majority in principal amount of the Notes issued hereunder, if such appointment by holders of Notes be made prior to the expiration of one year after such publication of notice. Every such Trustee appointed in place of Metro-

politan Trust Company of the City of New York or its successor in the trust shall always be a national bank or a trust company in good standing, doing business in the Borough of Manhattan, City of New York, if there be such a national bank or such a trust company willing and able to accept the trust upon reasonable or customary terms.

Any Trustee hereunder may be removed at any time by an instrument in writing filed with the Trustee and executed by the holders of a majority in principal amount of the Notes at the time outstanding, and upon payment of the reasonable and customary compensation of the Trustee and of its expenses and disbursements to date of removal.

Any such new Trustee appointed hereunder shall execute, acknowledge and deliver to the Trustee last in office and also to the Corporation an instrument accepting such appointment hereunder and thereupon such new Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessors hereunder with like effect as if originally named as Trustee herein; but nevertheless, on the written request of the new Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such new Trustee, upon the duties herein expressed, all the rights, powers and duties of the Trustee so resigning or removed. Upon request of any such new Trustee, the Corporation shall make, execute, acknowledge and deliver any and all assignments, evidences or instruments in writing [fol. 53] for more fully and certainly vesting and confirming to such new Trustee all such rights, powers and duties.

## Article Tenth

## Miscellaneous Provisions

Section 1. The Corporation and the Trustee may deem and treat the holder of any Note issued hereunder which shall not at the time be registered or which shall be registered to bearer and the holder of any coupon, as the absolute owner of such Note or coupon for the purpose of receiving the benefits thereof and hereof and for all other purposes whatsoever, whether such Note be overdue or not, and the Corporation and the Trustee shall not

be affected by any notice to the contrary. The ownership of registered Notes shall be proved by the books of registry of such Notes.

Section 2. No recourse under or upon any obligation or covenant of this Indenture of any Note issued hereunder or because of the creation of any indebtedness represented thereby shall be had against any incorporator (save and except said Harry Levy, the largest stockholder of the Corporation, who guarantees the payment of the Notes as to principal and interest, by his separate undertaking appended hereto) or any present or future stockholder, officer or director of the Corporation or of any successor corporation, either directly or through the Corporation or otherwise, by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise; it being expressly understood that this Indenture and the obligations issued thereunder are solely corporate obligations and that no personal liability whatsoever shall attach to or be incurred by the stockholders, officers of directors of the Corporation or of any successor corporation or to or by any of them, because of the creation of the indebtedness hereby authorized or under or by reason of the obligations or covenants contained in this Indenture or in any of the Notes issued hereunder or implied therefrom; and that any and all personal liability of every name and nature, either at common law or in equity or by statute, of, and any and all rights and claims against every such incorporator, stockholder, officer or director are hereby expressly [fol. 54] waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes and coupons.

Section 3. All the covenants, stipulations and promises in this Indenture contained by or in behalf of the Corporation shall bind its successors or assigns, whether or not so expressed. For every purpose of this agreement, including the execution, issue and use of any and all of the Notes, the word "Corporation" shall include and mean not only the party of the first part but also any successor corporation, subject, however, to the provisions of Sections 5 and 12 of Article Third hereof. Every such successor corporation (subject as aforesaid) shall possess, and from time

to time may exercise, each and every act and power hereunder of the Corporation, in its name or otherwise.

In Witness Whereof, American Home Furnishers Corporation has caused this Indenture to be signed in its corporate name by its President or a Vice-President and its corporate seal to be hereunto affixed and attested by its Secretary or an Assistant Secretary, and Metropolitan Trust Company of the City of New York, in token of its acceptance of the duties herein imposed upon it as Trustee, has caused this Indenture to be signed in its corporate name by its President or a Vice-President and its corporate seal to be hereunto affixed and attested by its Secretary or an Assistant Secretary, all in duplicate, as of the day and year first above written.

American Home Furnishers Corporation, by W. A. Godwin, Vice-President. Attest: H. H. Schumaker, Secretary. (Seal.) Metropolitan Trust Company of the City of New York, by C. W. Weston, Vice-President. Attest: Geo. N. Hartman, Secretary. (Seal.)

[fol. 55] State of New York,
County of New York, ss:

On this 5th day of October, in the year one thousand nine hundred and twenty-two, before me personally came W. A. Godwin, to me known, who, being by me duly sworn, did depose and say: That he resides in Norfolk, Virginia; that he is a Vice-President of the American Home Furnishers Corporation, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order.

Harry F. Stevenson, Notary Public, New York County. New York County Clerk's No. 436. New York Register's No. 4668. Commission expires March 30th, 1924. (Seal.)

State of New York,
County of New York, ss:

On this 5th day of October, in the year one thousand nine hundred and twenty-two, before me personally came Charles

W. Weston, to me known, who, being by me duly sworn, did depose and say: That he resides in Montclair, Essex County, New Jersey; that he is a Vice-President of Metropolitan Trust Company of the City of New York, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Trustees of said Corporation, and that he signed his name thereto by like order.

A. E. Fowler, Notary Public, Kings Co., N. Y., No. 80. Reg. No. 4080. Certificate filed New York Co., N. Y., No. 148. Reg. No. 4164. Queens Co., N. Y., No. 843. Commission expires March 30, 1924. (Seal.)

[fol. 56] Whereas I, Harry Levy, the principal stockholder in the American Home Furnishers Corporation, the obligor named in the above instrument, am personally and financially interested in the execution and performance of this agreement.

Now Therefore in consideration of the premises and of other good and valuable consideration, I guarantee the payment of each and every note issued hereunder with interest thereon at date of maturity, or in case same shall be declared due and payable before maturity pursuant to any of the provisions contained in this Indenture.

Witness my signature and seal this thirtieth day of September, 1922.

Harry Levy. (Seal.)

State of New York,
County of New York, ss:

On this 5th day of October, in the year one thousand nine hundred and twenty-two, before me personally came Harry Levy, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

Harry F. Stevenson, Notary Public, New York County. New York County Clerk's No. 436. New York Register's No. 4668. Commission expires March 30th, 1924. (Seal.)

In United States District Court

Exceptions to Amended Specifications—Filed June 20, 1925

And now comes the bankrupt and excepts to the amended specifications filed hereon on the 20th day of June, 1925, [fol. 57] in opposition to his discharge and further says that the same are not sufficient in law and as grounds for such exceptions and demurrer assigns the following:

1. That said amended specifications set forth no matter, act or thing which, by the provisions of Section 14 of the Bankrupt Act, and the sub-divisions thereof, are sufficient cause for the denial to the bankrupt of his discharge.

2. That said amended specifications are not verified as required by law.

S. M. Brandt, Attorney for Bankrupt.

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In United States District Court

Answer—Filed October 14, 1925

The Bankrupt for answer to the specifications in opposition to the discharge heretofore filed herein, says that he denies each and every allegation contained in said specifications as though they were herein repeated, except the allegation that the said Bankrupt was the President of the American Home Furnishers Corporation at the times said specifications set forth and as to all other matters of said specifications in opposition to said discharge, he calls for strict proof.

And now having fully answered, he prays that the said specifications in opposition to the discharge be rejected and overruled. And he will ever pray, etc.

Harry Levy, by S. M. Brandt, Counsel.

[fol. 58] IN UNITED STATES DISTRICT COURT

ORDER OF REFERENCE TO R. T. THORP, AS SPECIAL MASTER—Filed June 24, 1925

This cause came on this day to be heard upon the specifications filed herein in opposition to the discharge of the bankrupt and upon the bankrupt's exceptions to said specifications, on consideration whereof the Court without now deciding the legal question raised by said exceptions requires the objecting creditors to give a Bill of Particulars of the written statement on which they will rely herein.

And the Court doth refer to R. T. Thorp, Referee in Bankruptcy, the said specifications in opposition to said discharge with leave to the bankrupt to file his answer thereto upon the filing of said Bill of Particulars and the said R. T. Thorp, Referee in Bankruptcy, is hereby requested to hear such testimony as may be offered in support of said specifications in opposition to such discharge, and to make finding upon said testimony and report his action thereon to this Court within sixty (60) days, together with all evidence taken by him in this behalf.

D. Lawrence Groner, U. S. District Judge.

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IN UNITED STATES DISTRICT COURT

BILL OF PARTICULARS—Filed with Referee July 1, 1925

The Chatham & Phenix National Bank of the City of New York, the Metropolitan Trust Company of the City of New York, and the Industrial Finance Corporation of 100 East 42nd Street, New York City, parties interested in the estate of Harry Levy, bankrupt, on information and belief, hereby specify the following as facts on which they base their objection to the granting of a discharge from his debts to said Bankrupt.

[fol. 59] 1

The above-named creditors object to the granting of a discharge to the bankrupt on the grounds that he cannot comply with Section 14 B (3) of the Bankruptcy Act in

that he has obtained money on credit upon a materially false statement in writing made by him to the creditors and their representatives for the purposes of obtaining money from the creditors.

A. The bankrupt made a statement in writing.

The bankrupt, as President of the American Home Furnishers Corporation of Norfolk, Virginia, at the request of the creditors, above-named, authorized Robert Schreffler, the assistant treasurer of the Corporation, to prepare a written balance sheet showing the financial status of the Corporation, which statement he, the bankrupt, forwarded to the creditors.

The bankrupt opened and showed the account books of the Corporation to Haskins & Sells, certified public accountants, of New York City, as agents of the creditors.

The bankrupt forwarded to the creditors, under cover of his letter, the report of Haskins & Sells as prepared from the account books representing it to be a true statement of the financial status of the Corporation.

B. The statement was, to the knowledge of the bankrupt, materially false.

The statement prepared by Schreffler, the account books of the Corporation, and the Haskins & Sells report, as prepared from the account books, represented the financial status of the Corporation to be good and substantial, whereas in truth and fact the statement of Schreffler was to the knowledge of the bankrupt materially false, the account books were falsified before being shown to Haskins & Sells, and the Haskins & Sells report was, to the knowledge of the bankrupt, a materially false statement of the financial status of the Corporation.

C. The statement was made to the person from whom the credit was obtained.

The Schreffler balance sheet was sent to the Industrial [fol. 60] Finance Corporation as acting representatives of the creditors.

The bankrupt opened and showed the account books of the Corporation to Haskins & Sells as the representatives of the creditors.

The bankrupt forwarded, under his letter, the Haskins & Sells report to the Industrial Finance Corporation as acting representative of the creditors.

All of these statements were accompanied by verbal assurances of the bankrupt as to their correctness, said assurances being directed to the officers of the creditors companies.

D. The statement was made for the purpose of obtaining money on credit.

At the time the statement was given, the bankrupt, as the President of the Corporation, was negotiating for a loan of $1,500,000.00 for the Corporation from the creditors. He knew that no money would be advanced without a presentation of a financial statement, therefore he made the statement referred to above.

E. Money was obtained on the strength of the financial statement and on credit.

On or about the 30th day of September, 1922, the creditors advanced money to the said American Home Furnishers Corporation upon a series of notes aggregating $1,500,000, each of which notes was guaranteed by the said bankrupt. Subsequently, the said American Home Furnishers Corporation paid $300,000.00 of said notes and thereafter the creditors entered into a new agreement with the said American Home Furnishers Corporation and the said bankrupt by which they exchanged said remaining notes for a new series of notes aggregating approximately $1,200,000.

F. The false statement was relied upon by the creditors.

Creditors, after preliminary negotiations with respect to the loan, asked for a financial report and received the balance sheet prepared by Schreffler. After seeing the Schreffler balance sheet, the creditors sent Haskins & Sells [fol. 61] to verify the statement by examination of the account books of the Corporation. The account books were shown to Haskins & Sells, and Haskins & Sells prepared, from their examination, a report, which report was sent to the creditors by the bankrupt. On receipt of the Haskins & Sells report, but not before, the creditors loaned the money secured by the notes above-mentioned.

G. The said bankrupt is now indebted to the creditors.

Subsequent to the giving of the said series of notes aggregating $1,200,000 the American Home Furnishers Corporation became bankrupt and there remains unpaid on account of said last mentioned notes approximately $950,000 for which the said bankrupt is now liable as guarantor.

Satterlee & Canfield, Attorneys for Creditors.

Office and P. O. Address: No. 49 Wall Street, New York City.

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IN UNITED STATES DISTRICT COURT

REPORT OF R. T. THORP, REFEREE IN BANKRUPTCY, ACTING UNDER SPECIAL REFERENCE OF THE BANKRUPT'S APPLICATION FOR A DISCHARGE, AND THE OBJECTIONS THERETO FILED BY CERTAIN CREDITOR'S OF THE BANKRUPT—Filed September 11, 1925

To the Honorable D. Lawrence Groner, Judge of the said Court:

In obedience to the decree entered by your Honor on the 24th day of June, 1925, after notice to counsel for the bankrupt and counsel for the objectors, a copy of which notice is hereto attached, the undersigned proceeded on the 8th day of July, 1925, at his office, 415 Citizens Bank Building, Norfolk, Virginia, to perform the duties required [fol. 62] of him by said decree. Nothing was done on that day except to adjourn the meeting at the request of counsel for the objectors to 11 o'clock A. M. July 17th. On July 17, 1925, counsel for the objectors and counsel for the bankrupt were present. The undersigned stated that as he understood he was acting in this reference as a special master, and had to have the services also of a stenographer, and probably incur other costs, for which there should be some provision made, or some understanding before the costs were incurred, and thereupon counsel for the objectors and the bankrupt agreed to guarantee the costs in equal proportions.

Stenographic notes of all the subsequent proceedings were taken by Miss C. L. Hendry, and are herewith submitted as a part of this report.

The question before the Court is whether the bankrupt should be granted or denied a discharge.

The general policy of the bankruptcy Act is that a discharge when applied for in season should be granted to bankrupts so that they may be able to go into business relieved of all encumbrance arising from previous misadventures or misfortunes. This policy is made mandatory upon the courts except in certain enumerated cases. The language of Section 14b clearly shows the general policy of the law, and enumerates the exceptions. It is not claimed that any other exception is applicable in this case but that stated in Section 14b (3) of the Bankruptcy Act, which is that he—

"obtaining money or property on credit upon a materially false statement in writing made by him to any person or his representative for the purpose of obtaining credit from such person;"

unless it is shown that the bankrupt falls within this exception, he is entitled to his discharge and upon this issue the burden is upon the objectors to show that he does fall within the exception.

Before taking up the testimony in detail it may be helpful towards reaching a just conclusion in this case to give and keep in mind an outline of the genesis of the operations which culminated in the furnishing to the American Home Furnishers Corporation of $1,500,000.00 by the bankers who are now objecting to the discharge of Harry Levy, who was President of that Corporation.

The origin of the corporation is immaterial. Suffice it [fol. 63] to say it grew out of and was the successor of the large furniture store business of Phillip Levy & Company and the stock of the Corporation was owned by Harry Levy and Ester Levy, the brother and widow, respectively, of Phillip Levy, dec'd. This Corporation owned and operated some nine or ten furniture stores in as many cities, selling furniture chiefly upon installment credit. The very nature of the business and the number of stores and different localities of their operations required much and intricate bookkeeping.

In the early part of 1922, or it may be in the latter part of 1921, the Directors of the Corporation found that

in the conduct of its extensive business the Corporation needed $1,500,000.00 additional capital, and to secure it opened negotiations with Redman & Company, financiers, and was about to consummate arrangements whereby that Company was to furnish the additional money, but before this arrangement was consummated Harry Levy met with Arthur J. Morris, who convinced him that he (Morris) could procure the needed additional capital upon a better plan and more favorable terms than that contemplated and about to be consummated with Redman & Company. The Morris plan of raising the needed $1,500,000.00 additional capital was submitted to the directors and finally accepted by them in lieu of the Redman & Company arrangement, and the syndicate of bankers represented by Morris finally furnished the additional money needed by the Corporation.

The negotiations leading up to the furnishing of the additional capital were begun, practically carried on and completed between Morris and Levy. Morris had recently become prominent as a brilliant financier, author of the Morris Plan of banking, a lawyer of recognized ability and an eminently successful banking business man. Harry Levy was a salesman of furniture and, as the result of his operations show, a man of limited capacity beyond his particular line of business. He spent much of his time away from Norfolk where the parent store and chief office of the Corporation were. The books were kept by Schreffler, who had been highly recommended to the Corporation, under the immediate control and management of Schumaker. The whole business was supposed to be under the general supervision of Harry Levy, the President of the [fol. 64] Corporation. The books were apparently well kept. No error was ever found in them until the late spring of 1923, when, at a meeting of certain bankers and others held in the Directors' room of the Trust Company of Norfolk for the purpose of securing additional money for the Corporation, Schreffler made the statement that the books had been padded and, therefore, did not show the true condition of the Corporation. Why Schreffler made this statement or confession at this time is not divulged. Apparently it was to warn the bankers against making any further advances of money to the Corporation: Prior thereto, and as late as September 11, 1922, the books had

been examined and audited by competent certified public accountants.

A careful sifting of the testimony taken will show that much of it may be discarded as wholly irrelevant and of no help in deciding the issue joined.

The salient facts as disclosed by the mass of testimony and exhibits are that Harry Levy, the bankrupt, was President of the American Home Furnishers Corporation, a company operating stores in a number of places, chiefly upon installment credits. The stock of this Corporation was owned in the main by Harry Levy, and his sister-in-law, the widow of his deceased brother, Phillip Levy. These two were also owners of the capital stock of the Levy Realty Company, a corporation dealing in real estate but having no connection with the American Home Furnishers Corporation, except that the stockholders in the two companies were practically the same. To meet and pay indebtedness to the local banks the property owned by the Levy Realty Company was encumbered and afterwards sold for $550,000., far less than its appraised value placed on it by Harry Levy. This transaction was practically consummated before the objectors became creditors of the bankrupt, or the Home Furnishers Corporation, and has no bearing upon the question now before the Court.

In the course of the negotiations with Morris, Levy, Schumaker and Schreffler went to New York and gave to Morris a writing (Exhibit "A") purporting to be a balance sheet showing the assets and liabilities of the American Home Furnishers Corporation. This balance sheet is dated May 31, 1922, and is signed by Robert B. Schreffler, Assistant Treasurer.

[fol. 65] The trust indenture to secure the serial notes for the aggregate amount of $1,500,000.00 was not made at the time the balance sheet was furnished. It was not made until September 30, 1922. The three months intervening between these dates was devoted to investigation of the affairs of the Home Furnishers Corporation for the purpose of ascertaining its true condition, and whether it would be a safe investment on the part of the banks which were expected to furnish the money.

Haskins & Sells, certified public account-s of New York, made an examination, which was completed and submitted

on September 11, 1922 (Exhibit "C"). A copy of this audit was sent by Harry Levy with a letter signed by him to Vere Brown, Vice-President and General Manager of the Industrial Finance Corporation. This writing (Exhibit 'C") and the balance sheet (Exhibit "A"), are the writings relied on by the objectors.

Mr. Brown testifies (transcript p. 72): "I can't say which of the statements were filed with us but this is the statement (Exhibit "C") on which we promised to extend credit to the Corporation." The same witness, on page 73 of the transcript, when asked whether the statement signed by Schreffler dated May 31, 1922, (Exhibit "A") was absolutely relied on in extending the credit, testified:

"We relied necessarily upon the representations made to us by Mr. Levy and Mr. Schumaker * * * We agreed on the strength of the information given us at that time, that we would extend them the desired credit, provided they had an audit by the firm of Haskins & Sells and that audit verfied practically the statements they had previously made to us."

The testimony shows that in the late spring or early summer of 1922, Harry Levy, Schumaker and Schreffler were in New York negotiating with Morris for the loan of $1,500,000.00, and delivered to him a balance sheet (Exhibit "A") which purported to reflect the financial condition of the American Home Furnishers Corporation as of May 31, 1922. This balance sheet was in writing and signed by "Robert B. Schreffler, Assistant Treasurer." The balance sheet showed a financial condition of the Corporation which appealed to Morris as a favorable one for a safe loan, and probably but for this balance sheet the [fol. 66] negotiations would have gone no further. Up on the strength of this showing the negotiations continued, the banks agreeing to furnish the money if the audit which was to be taken by Haskins & Sells substantially verified the result as shown by the balance sheet. The audit was taken by Haskins & Short, Certified Public Accountants, designated for that purpose by the banks, and their statement or audit (Exhibit "C") dated September 11, 1922, did substantially verify the balance sheet. Morris, himself, made frequent visits to Norfolk and to the offices of

the Corporation and was furnished every facility for a through examination of its condition. After the loan he became a director and was authorized in the financial affairs of the Corporation.

The first question presented is:

Were the statements furnished by Levy to Morris and his syndicate of bankers in fact materially false at the time they were made? The first suggestion of the false condition of the books, or that the books had been padded, occurred in the meeting of the directors and others in the spring of 1923, when Schreffler confessed that the books had been padded both as to the accounts receivable and the merchandise, but it does not appear from his confession when this padding of the books began, or that it existed at all at that time the balance sheet statement was furnished to Morris, or at the time the audit was made by Haskins & Sells, or even when the transaction was consummated by the loan of the money. To show that the padding did exist then the objectors rely upon the testimony of R. S. Wahab, who went into the employment of the Corporation on February 18, 1923, as an assistant to Schreffler. He testified that he found a paper marked "File G. B. N." among the records of the Grandy Corporation (this paper is herewith filed marked Exhibit "G"). It was found by Wahab among Schreffler's working papers and purports to show a "book" inventory and a "true" inventory as of January 1, 1923, the former being largely in excess of the latter. The paper is in the handwriting of Schreffler except as to entries in the months of March and April, 1923, which were made by Wahab. The excess in the book entries is so large as of January 1, 1923, as to raise a strong presumption that the system of inflation of the book values had been going on for a considerable [fol. 67] time. Wahab testified also that he had, by working backwards on the basis of the proceeds of sales and the inventory maintained by the Corporation, ascertained that the inflation existed on the 30th of September, 1922. On the other hand E. E. Strickland, who was in the employ of the Corporation in both 1922 and 1923, working directly under Schreffler, and having charge of the wholesale office books and warehouse books, employed as Assistant Mana-

ager, testified that in January, 1923, he assisted in taking an inventory and that after it was taken but before it was gotten out Schreffler sent for him, and had figures $245,-747.66 added to it—supposed to be merchandise which did not exist. The sum was so large he told Schreffler he could not hide it. That was the first padding of which this witness had any knowledge or had even heard. The only other testimony tending to show that the padding and inflation existed at the time the balance sheet was delivered to Morris and the audit of September 11, 1922, was furnished, is the testimony of Morris, who testified that when Levy and Schumaker were sent for and confronted with the confession of Schreffler they both admitted that the inflation or padding of the books existed at the time their statements had been made and before the loan of the $1,500,000.00.

None of the other witnesses who were present at the meeting mentioned this admission on the part of Levy and Schumaker. On the contrary Levy denies that he ever had any knowledge whatever of any padding of the books until called to the meeting and told of the Schreffler confession. The witnesses agree that Schreffler said he did the padding under the direction of Schumaker.

Upon consideration of all the testimony it is not clearly shown that the padding existed at the time the balance sheet was delivered to the Haskins & Sons audit of September 11, 1922, was made and hence it cannot be said that either of the two statements made by Levy was in fact a false statement at the time it was made.

But even if the books were padded and failed to reflect the true condition of the corporation and in consequence of the false entries in the books, a false balance sheet and a false audit was made, it has not been shown that Levy had knowledge of the padding and inflation of the accounts at [fol. 68] the time the balance sheet and audit preceding the loan was made. On the contrary at the time the $1,500.-000.00 was obtained Harry Levy had other property than his stock in the American Home Furnishers Corporation, notably his stock in the Realty Corporation, or his supposed equity therein, all of which he sacrificed by giving his personal endorsement upon the loan. It is hardly conceivable that he would have done this had he known that the Home Furnishers Corporation was in the desperate financial con-

dition indicated by the book padding. Moreover, of all the witnesses examined the only evidence tending to show knowledge of this padding is that given by Morris that he admitted it in the meeting held in the Directors Room of the Trust Company. This is denied by Levy. All the witnesses testified that after the confession of Schreffler all present became very much excited, and in the excitement and confusion arising it is almost impossible to ascertain what was said or how far it should be considered as sufficient to prove a fact. One witness (Kerr) testified that Levy seemed dazed.

## Findings

Upon consideration of all the testimony and exhibits we find:

1. That the objectors have failed to show that the written statements relied on were materially false at the times they were made.

2. That they have failed to show that the money was obtained on any known false statement in writing made by Levy.

3. That the $1,500,000.00 was loaned by the objectors, not because of any statement made by Levy, but upon the audit made by Haskins & Sells, Certified Public Accountants, designated or accepted for that purpose by the objectors themselves.

4. That even if false the objectors have failed to show that Harry Levy had knowledge of their falsity, or in the matter of obtaining the money of the objectors for the Corporation Harry Levy acted otherwise than in good faith, [fol. 69] therefore it is recommended that he be granted his discharge.

Authorities were cited by objectors and counsel for the bankrupt in briefs filed. No comment is deemed necessary upon these authorities as they all agree that the bankrupt would be entitled to his discharge, if the facts are as stated in this report.

The costs incurred in this reference are as follows:

| | |
|---|---|
| Miss C. L. Hendry, stenographer | $57 60 |
| C. G. Smithers, U. S. Marshal | 5 54 |
| R. T. Thorp, Referee, as Special Master | |

There is in bank to the credit of the court in this cause $386.52, which sum is all that the estate will ever realize.

Respectfully submitted,

R. T. Thorp, Referee in Bankruptcy.

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IN UNITED STATES DISTRICT COURT

STATEMENT OF EVIDENCE

A. J. Morris, a witness on behalf of the Objecting Creditors, being duly sworn, testified as follows:

By Mr. Hicks:

In the Spring of 1922, I was Vice-President and General Counsel and directing head of the Industrial Finance Corporation; that I am acquainted with Mr. Harry Levy, the Bankrupt.

Q. Did you, in the spring of 1923, have negotiations with Levy looking to the flotation of some securities?

Mr. Brandt: I object. This is inadmissible, your Honor. The claim of the objectors to this discharge is the making in writing, under the statute, any false statement upon which money, or credit for money was obtainel. The negotiations are not evidence. The only thing that is evidence is the statements themselves, which must be in writing and must be, under the terms of the statute, signed by the bankrupt, or someone acting pursuant to authority given by him to [fol. 70] that person. This is the time, to my mind, when this issue has to be met in that way.

The Court: I don't think so. It looks like he is simply laying the foundation. It is showing the man's connection. I think your objection, according to the statement you have made, is premature.

Mr. Brandt: All right, I wanted to have myself clear on the record.

A. I did.

By Mr. Hicks:

Q. I hand you a paper, purporting to be a balance sheet as of May 31, 1922. Will you please state whether you ever saw that paper before?

Mr. Brandt: This is a balance sheet dated May 31st, and is signed by Robert E. Schreffler. I object to the introduction of the paper until it is shown that that paper was made pursuant to authority of Mr. Levy. It is not Mr. Levy's statement. It was a paper filed by Mr. Schreffler for Mr. Levy and not by Mr. Levy.

The Court: Is it your idea that the objections to discharge mentioned in Section 14, required that the writing shall be signed by the Bankrupt?

Mr. Brandt: Or his agent. That is the exact language of the Statute. That is not my idea. That is the law.

A. After Mr. Levy and I began these negotiations, he was, at the beginning, joined by Mr. Schumaker, who was also an officer of the American Home Furnishers Corporation. The negotiations had not gone very far when I asked for a balance sheet, and subsequent to that request he told me that at the next conference he would bring Mr. Schreffler, who was Assistant Treasurer of the Company with him. Then, subsequent to that request, after that statement by Mr. Levy, they came to my office in New York, Mr. Levy, Mr. Schumaker and Mr. Schreffler, and this is the statement they presented to me.

[fol. 71] By Mr. Hicks:

Q. Mr. Levy was present when it was presented to you?
A. He was.

Note.—The balance sheet is filed in evidence marked "Exhibit A."

Mr. Brandt: I object to it for the reason stated, and because the place has been fixed, but not the time.

By Mr. Hicks:

The statement marked "Exhibit A" was presented to me in the spring or early summer of 1922. I cannot give the exact date. I think I would be safe in adding it was

presented to me shortly subsequent to the date it bears, because at no time when I asked for a statement—and I asked for several—did I get the statements then. I asked for a balance sheet from the American Home Furnishers Corporation and the statement marked Exhibit "A" was handed to me in response to that request.

Mr. Brandt: I object to the paper, and ask that it be stricken out, for the reason this is a proceeding by Harry Levy, individually, and that paper has no place in this record.

The Court: It is impossible for me to tell at this phase what papers should be in and what not. I will let them come in subject to future ruling.

By Mr. Hicks:

Of course, the statement marked Exhibit "A" was not the only paper resulting from negotiations and conferences which we had. There were balance sheets, operating statements and schedules of accounts receivable, accounts of operation and a multiplicity of statements and figures of information whereby consummation was reached of the negotiations by my associates and myself.

Q. Now, will you please state whether or not you extended any credit to the American Home Furnishers Corporation subsequent to the receipt of that paper which I have just handed you? (Exhibit "A.")

Mr. Brandt: I make the same objection.

[fol. 72] Note.—The objection was overruled.

By Mr. Hicks:

After the negotiations had begun between Mr. Levy and his associates and me and my associates we requested balance sheets and other statements. Mr. Levy gave me Exhibit "A" as the first balance sheet and gave us subsequent information from time to time as requested. It became apparent to me that any amount of money which we might loan to the American Home Furnishers Corporation would necessarily, if not largely and almost entirely, be dependent upon the information and investigation of Mr. Levy's

statements to me and my associates. We told Mr. Levy and his associates that if we organized this syndicate and loaned the American Home Furnishers Corporation $1,500,000.00, to be evidenced by serial notes payable thirty months after date, serially, and all the terms of which are reflected in printed trust indenture, which was subsequently agreed to, and that if we loaned the American Home Furnishers Corporation this money, it would be, first, upon our satisfaction with the statements and representations that he made to me and my associates; second, upon our confidence and faith in his veracity, and, third, upon our confirmation, in so far as it was practicable, of those statements, which confirmation would be by a certified public acountant. I then explained to Mr. Levy, which he himself readily admitted, that you could get all the certified public accountants in the country to audit and examine his statements, and yet it was almost impossible to arrive at any fixed or definite conclusion regarding the value of the American Home assets, which consisted chiefly of accounts receivable, and secondly of inventory, without relying almost entirely upon his representations.

Mr. Brandt: We are dealing with verbal matters.

The Court: You can just reserve your rights by making exceptions.

Mr. Hicks: I will agree that Mr. Brandt can make any objections hereafter, so that we may proceed.

A. We thereupon took this statement marked "Exhibit [fol. 73] A" together with other important operating statements, and subsequently together with a statement rendered us by Haskins & Sells, and I took Mr. Levy alone, and I said "Mr. Levy, I have told you I am responsible to a very large extent. I organized this syndicate of two New York banks, together with ourselves, to buy this million and a half of serial notes, and I want to know if this statement (marked Exhibit "A") together with statement heretofore rendered by your Assistant Treasurer, Mr. Schreffler and subsequently presented by Haskens & Sells, together with classification of accounts receivable and the operating statements and inventory statements are absolutely true and correct, and if I am justified in relying and

depending on them 100 per cent," and I said "My name and my reputation are at stake. Your honor, your integrity and your future is at stake, and neither you nor I can afford to have any misunderstanding whatsoever about the truth and equity of these statements upon which we are relying as a basis of extending to your company the large amount of credit, amounting in the aggregate to $1,500,000." He thereupon gave me his positive assurance these statements were accurate and correct. They reflected the true assets and liabilities and operating conditions of this company, and to use his own language "I would cut my right arm off before I would deceive you in any particular." I then even discussed with Mr. Brown the advisability of having him swear to these statements. Mr. Brown thought he might not like such request and we had agreed that he should personally guarantee these obligations, principal and all, and he stated "I would not and could not afford to personally guarantee this obligation if I did not know that the statements rendered to you are reliable and absolutely correct." The representations that this statement or statements were absoluely accurate or correct was also confirmed by Mr. Schumaker, Mr. Schreffler and Mr. Levy, all three in the presence of each other.

After receiving these statements which I have just described, our Company organized a syndicate consisting of the Chatham & Phenix National Bank of the City of New York, the Metropolitan Trust Company of the City of New York, and the Industrial Finance Corporaion of the City of New York and we purchased an issue of collateral trust [fol. 74] serial notes aggregating $1,500,000 from the American Home Furnishers Corporation, which purchase was made as a result of the negotiations and in reliance upon the statements heretofore referred to. The notes so taken have not been paid in entirety but were partly paid when the Company got into financial trouble. There is still a substantial unpaid balance.

After I received the statements above referred to I had several conferences with Mr. Levy in which he gave me his absolute assurance that we could rely upon the correctness of the statements and his representations concerning these statements.

Subsequently I had talks with Mr. Levy, the most important being at the time of the Schreffler confession.

Q. Tell the facts in regard to that.

Mr. Brandt: I object to Schreffler's confession.

By Mr. Hicks:

Q. State the circumstances.

A. I cannot give the exact date. I think it was either the latter part of April or the first part of May, 1923, long after we had purchased the notes, when things in the American Home Furnishers Corporation had gotten to a point where something had to be done. Mr. Brown and I had come to Norfolk for a conference with the other Directors of the American Home Furnishers Corporation. We had a meeting in the Trust Company of Norfolk. At this meeting there were a number of the Directors of the Company and Mr. Hugh W. Davis who was acting as special counsel for the Company. The meeting lasted practically all day and people were in and out. There were at the meeting Mr. Edwin T. Hambleton of Hambleton & Company, and Mr. John Schriver. Mr. Brown and I had worked out with Mr. Kerr and Mr. Eggleston of the Trust Company of Norfolk, and Mr. Godwin a plan for saving the Company providing we could arrange a loan of $600,000 on short term notes, and we were trying to get Hambleton & Company to purchase these short term notes, in which event we were to get the holders of the serial notes to hold up certain maturities, and at the meeting we were going over the liabilities and assets' statements of the Company [fol. 75] and the operating statement with Mr. Schreffler. I was in the act of questioning Mr. Schreffler, as Mr. Brown and I had before ascertained some discrepancy in the statement as rendered to us at the time we made our loan or just prior thereto, together with analysis of the operating statements, touching the subsequent asset and liability statements, and, in order to get things clearly settled, I was questioning Mr. Schreffler about the statements and about some of the discrepancies. There appeared to be a marked shrinkage of assets and a marked enhancement of liabilities, and a continuous enhancement of expenses.

By Mr. Brandt:

Q. Was Mr. Levy present at that time?
A. He was not.

Mr. Brandt: I object to it.

This made it necessary to question Mr. Schreffler, and in the midst of his being questioned, Mr. Schreffler said he wanted a personal intervew with Mr. Taylor, Mr. Kerr and Mr. Godwin. I think two people he first asked for—he went into a private room with them, and subsequently, either Mr. Godwin or Mr. Kerr came out and asked for Mr. Hugh Davis, and for Mr. Tazewell Taylor, and they went in there for a few minutes, and then Mr. Tazewell Taylor came out and called me in the room. We had a conference in the room, which I cannot tell here, and then I recommended that before we do anything further we send for Mr. Schumaker and Mr. Levy. We immediately sent for Mr. Schumaker and Mr. Levy, and came out into the general meeting. Mr. Schumaker and Mr. Levy came, and then I said to Mr. Levy and Mr. Schumaker that Mr. Schreffler had made the confession that the assets and liabilities statements as rendered us just prior to the making of the loan of $1,500,000, and which figure had been carried monthly and brought down to date, and being used to date, were fraudulent and incorrect. I furthermore stated to Mr. Levy and Mr. Schumaker that when we asked Mr. Schreffler in what particulars they were incorrect, he named over the items that were in conflict in the statement, and recited the accounts receivable and in the inventory, and that the accounts receivable had been juggled and [fol. 76] improperly inflated by keeping alive all the accounts receivable which represented unpaid balance of goods which had been pulled or repossessed, and that in addition to keeping alive those accounts receivable, the goods which had been pulled or repossessed were likewise added to the inventory just as if new goods, and had been brought in accounts reecivable and had been inflated on one side, and the inventory likewise inflated also on the account. He furthermore admitted that the goods had been shipped from the Grandy Manufacturing Corporation at Newport News over to the warehouse in Norfolk, and they had not depleted the assets in the Grandy Corporation, but in-

creased the inventory in the Norfolk warehouse. I furthermore presented to Mr. Levy and to Mr. Schumaker that Mr. Shreffler also advised the fact that in amount the accounts receivable and the inventory and the Grandy had been inflated in assets more than $600,000 and probably a million or more, and that that much inflation had existed long before the time when they got the $1,500,000 from us, and had continued from that time, and from the time they got the money, and the statement that had been before the Board of Directors was false, inflated and incorrect. I asked Mr. Schumaker and Mr. Levy if that confession of Mr. Schreffler was true and correct, and they both said it was. Thereupon I asked Mr. Schumaker if he realized what he was saying; did he realize he was making a confession to a criminal act in furnishing a statement upon which large sums of credit had been obtained, and did he know what he was saying and doing, and he said he did, and thereupon I asked if he and Mr. Levy had known it at the time they did it, that it was wrong and criminal, and he said "Yes, we knew it, but we had to do it in order to keep the Company alive and get the money with which to float the Company," and I asked Mr. Levy, and Mr. Levy said "Yes, I did. I assume all my share of the responsibility for it. I want you gentlemen to know I did not do it to make a dollar for myself. I did it to keep this Company afloat, and I assume my entire responsibility for it as President of the Company." When that confession was made by Mr. Shreffler, confirmed, ratified and admitted by Mr. Levy and Mr. Schumaker, I want to tell you, gentlemen, there was consternation in the room. When I first heard it, and before Mr. Levy [fol. 77] and Mr. Schumaker came, I refused to believe it. I said "It is absolutely incomprehensible to me," and both Taylor, Kerr, Godwin and I agreed, and Hugh Davis, after Levy and Schumaker admitted it, we could not understand it. It staggered us, and has staggered me ever since. Up to that time Mr. Levy, Mr. Schreffler and Mr. Schumaker had our implicit confidence, regardless of any criticism, and we were then working on this matter trying to save the Company, and had almost reached the point where the Trust Company of Norfolk, and Hambleton & Company were going to put $600,000 of new money, with which to save the Company, on short term note issue. Mr. Levy, in

his ratification and admission said that it was impossible for him to give the exact figures of the inflation on the statement, but was willing to take Mr. Shreffler's figures on it. Mr. Shreffler stated it was impossible for him to give exact figures. Mr. Schreffler stated the figures were not less than $600,000 and may reach a million or more.

Q. Did you ever take any steps towards ascertaining what the assets were?

A. After that terrific situation we employed Haskens & Sells to make an independent audit and investigation, and also employed Sanderson & Porter to make a complete investigation of the assets and liabilities. Sanderson & Porter's report is available for the Court record, and Haskens & Sells' report is availiable for the Court.

Cross-examination.

By Mr. Brandt:

Q. Did not Mr. Levy also state, in the presence of all the Board of Directors, and the persons who were present on that occasion, that he did not know at the time of these negotiations with your Company, and when this $1,500,000 of stock was purchased by your syndicate, that the condition Mr. Schreffler admitted, could possibly exist?

A. On the contrary he said he knew that the statements as given to us were not correct, and that he knew this fraudulent padding of the assets had been going on for a long time before he came to New York to negotiate with me.

Q. In point of fact, at that time, Mr. Levy and his [fol. 78] sister-in-law, Mrs. Esther Levy, at that time were the owners of all the stock of the Levy Realty Corporation, which was the owner of various real estate in the City of Norfolk?

A. I don't know.

Q. You knew that when you made this loan?

A. My recollection is he and Mrs. Levy—I knew either he and Mrs. Levy, or he and Mrs. Levy and the American Home Furnishers Corporation together were substantially the owners of all the real estate. My recollection is he and Mrs. Levy were the majority owners.

Q. Don't you know, in point of fact, that on the 30th of September, 1922, Mr. Harry Levy and Mrs. Esther Levy were sole owners of all of the stock of the Levy Realty Corporation?

A. I don't remember that as a point of fact. I do remember at the time Mr. Levy gave me the statement of his own personal worth, and he guaranteed the serial notes, he showed me where he and Mrs. Levy were the majority or substantially the owners of the stock in the Levy Realty Company, which, however, was subject to a large volume of mortgage stock, and only represented an equity in the building.

Q. Don't you know, in point of fact, September, 1922, the property owned by the Levy Realty Corporation was not subjected to large mortgages, and large mortgages were not placed on that property until after the sale of this issue?

A. That is not my recollection. It was subject to large mortgage.

Q. You found the statements as to the Levy Realty Company absolutely correct?

A. I am not sure. My recollection is that there was some discrepancy in those.

Q. No substantial discrepancy?

A. My recollection was some unpaid debts he had not spoken about. I know there were some irregularities of between $30,000 and $60,000.

Q. Not substantial?

A. That is fairly substantial.

Q. Did not Mr. Levy state, at that meeting, when Mr. Schreffler made this so called confession, at the time the negotiations were had, the statements furnished the American Home Furnishers Corporation, the statements of assets and liabilities, prior to September 30, 1922, he did not know personally that these statements were false in any respect?

A. He did not. He admitted that this false padding had been going on for months and months, and I said "Do you [fol. 79] mean to say Schreffler and Schumaker were making a practice of doing this thing?" He said "I assume my entire responsibility as President of the Company. I want you gentlemen to know I did it to keep the Company alive.

I did not make a dollar myself personally." That was the only reference he ever made in my hearing. I never did find out when it begun.

Q. You are not prepared to say now?

A. I don't know, as they told me it was before they got the $1,500,000 from us. The subsequent investigation of the assets and liabilities show discrepancies and jugglings, and it had been going on long before. If an examination of their books had shown the correct statement of assets and liabilities, and the correct statements of the operation of this Company, we would never have loaned the American Home Furnishers Corporation a dollar. Instead of having shown a highly successful company, if the facts had been given us they would have shown us substantially an unsuccessful company, slipping every year worse and worse.

The indenture which was executed in connection with the underwriting of the serial note issue appears to be executed by W. A. Godwin as Vice President, and attested by H. H. Schumaker, Secretary. The date of the guarantee made by Levy individually was September 30, 1922, and covered the loan of the money secured by the indenture. The loan was made by a syndicate in reliance and upon the statement dated May 31, 1922, referred to herein as Exhibit "A," and upon all the other statements that followed, including the statement of Haskens & Sells, who were employed to audit and confirm as far as practicable the statements given to us by Levy, Schreffler, and Schumaker.

NOTE.—The printed indenture is filed in evidence marked Exhibit "B," and the report of Haskens and Sells is filed as Exhibit "C."

We received a letter signed by Harry Levy dated September 30th, 1922, directed to Mr. Vere Brown's attention transmitting the report of Haskens and Sells.

[fol. 80] Mr. Hicks: It is admitted that the letter accompanied that statement "Exhibit C."

NOTE.—The letter attached to Exhibit "C" was filed in evidence marked "Exhibit D."

By Mr. Brandt:

A. I cannot testify from memory or fact whether a report of Haskens and Sells was received before the indenture securing the issue was drawn or executed but from the due course of events my impression is from subsequent transactions the Haskens and Sells report was received and examined before the syndicate paper was signed, probably not before it was drawn. However, I have no doubt the report was thoroughly scrutinized by every party in interest before the loan was actually made. I believe, however, there was some preliminary advances made to the American Home Furnishers Corporation pending the completion of the final deal. I know of my own personal knowledge that the Chatham & Phenix Bank examined it, and I have every reason to believe that Mr. Weston, of the Metropolitan likewise examined it. Probably some money, but no substantial sum was advanced to the American Home Furnishers Corporation pending the completion of this deal, and the examination and final approval of Haskens & Sells' report, but the major amount of money—in fact no money was advanced on the collateral short note issue until Haskens and Sell's report had been examined and accepted, and until the indenture had been executed, and any other moneys that had been advanced by Mr. Brown in behalf of our company to the American Home Furnishers Corporation prior to the acceptance and final confirmation of the matter. That is all that my memory can properly testify to.

Q. Can you give us the amounts of the preliminary loans prior to the issuance?

A. I cannot.

Q. The approximate amount?

A. I cannot do that.

Q. $100,000.00?

A. Frankly I don't remember.

Q. You don't remember whether it was $100,000.00?

A. Mr. Brandt, if you knew the volume of transactions of business in our office every day, you will readily understand it is humanly impossible for me to remember each transaction of this character. Mr. Brown is here. He [fol. 81] might remember. If he does not, they can furnish you the dates of everything, and the amount of the pre-

liminary loans and other information you or the Referee wants.

Q. You don't mean to say a transaction involving $100,000.00, $200,000.00 or $300,000.00 would be such an insignificant matter that you don't remember it?

A. I smile and answer. You knew when I was very poor, and a transaction of that kind was as big as the world, and notwithstanding that I am still poor and that amount of money would necessarily make great impression, I am bound to confess to you, in the volume of business our company does every day, it is utterly impossible for me to remember weeks afterward, those transactions. At the time I remember, if within a week or a month of such loan as made the American Home Furnishers Corporation, I would know something about it, but this late day my memory is blank upon the question.

Q. What was the nature of the security upon which the loan was made?

A. Accounts receivable.

Q. Accounts receivable of the American Home Furnishers Corporation?

A. Yes. When you have questions of policy, questions of policy involving large amounts, I am the consulting and general head, and I can remember questions and quality of problems, but I cannot remember dates and amounts.

Q. The basis of the loans on receivables was approximately 2.2?

A. I can't remember.

Q. You have at least two for one for every dollar loaned?

A. I could not answer that question. I haven't any particular recollection on that subject. All that is a matter of record.

Q. This $1,500,000.00 was loaned on receivables?

A. No, sir, the liabilities had been taken into account.

Q. With the receivables largely as a basis of financing?

A. This was a serial note issue, the terms of which were regulated by the trust indenture, and the loan was made upon a distinct understanding that the assets and liabilities were as represented at the time the commitment was made, and affirmed by the trust indenture, that the ratio of assets and liabilities should be maintained as provided for in the trust indenture, and that we had been given the truthful

facts. They did not have the ratio of assets and liabilities [fol. 82] which they purported to have had at the time they signed the trust indenture, and they never would have been able to maintain the ratio of assets and liabilities. If the truth had been known they were in default at the time they executed the trust indenture.

Q. After the formal starting part of this indenture, the indenture contains this very first stipulation:

"The corporation, (that means the American Home Furnishers Corporation) in furtherance of its policy and plan to fund its present indebtedness and to finance its current sales by arrangement with the Industrial Finance Corporation, the parent organization of the Morris Plan Bank, and through the use of the Morris Plan of retail trade acceptances whereby it will be enabled to realize cash on its daily sales and at the same time extend to its customers credit and the opportunity of making purchases by divided payments, thus increasing the business for the corporation, has duly resolved to execute and issue its seven per cent sinking fund serial gold notes in an amount not exceeding the principal sum of $1,500,000.00, the said notes to be dated as of September 30, 1922, to bear interest at the rate of seven per cent per annum payable quarterly on the 30th days of December, March, June and September in each year upon surrender of the respective coupons thereto attached, and to mature, be subject to redemption, subject to registration as to principal, and with sinking fund provisions, as hereinafter and in said notes provided."

Was this issue made with reference to the receivables of that corporation, or I will ask you whether or not it is not part and parcel of the plan whereby the Industrial Finance Corporation, through the Morris Plan, was to arrange to discount the time sales of the corporation?

A. The latter statement was part of the program, but not part of the issue. At the time of the confession of Mr. Schreffler which was acquiesced in by Mr. Levy, there were present at the meeting at the Trust Company Mr. Godwin, Mr. Kerr, Mr. Eggleston, Mr. Tazewell Taylor, Mr. Hugh W. Davis, Mr. Vere Brown, and subsequently Mr. Schumaker and Mr. Levy. At that time we had been engaged in the discussion of the affairs of the American Home Fur-

[fol. 83] nishers Corporation. The American Home Furnishers Corporation was indebted to the Industrial Finance Corporation and its subsidiary companies in a large and substantial amount. The loan of $1,500,000.00 had been reduced by a payment of the sinking fund amounting to $300,000.00, reducing the balance due to $1,200,000.00. After the alleged confession of Schreffler the Industrial Finance Corporation entered into an agreement with the American Home Furnishers Corporation with reference to the balance due on the 7% sinking fund notes.

Q. About when was that agreement entered into?

A. Somewhere in 1923.

Q. I hand you a paper filed under objections marked Exhibit "B," I have no doubt you got it from Mr. Hicks' office, which purports to be an agreement entered into the 25th day of June, 1923, which speaks of a "Creditor's Committee" and deals particularly with the balance due on the 7% sinking fund notes. Will you examine that and say whether that was an agreement entered into.

Mr. Hicks: It is admitted it is.

By Mr. Brandt: I prefer the witness to answer.

A. It appears to be the agreement that was entered into at that time between the parties in interest.

Mr. Brandt: I offer this paper as Exhibit "E."

By Mr. Brandt:

The agreement referred to as Exhibit "E" dated June 25th, 1923, was entered into subsequent to the confession of Mr. Schreffler. It was executed by Harry Levy as President of the American Home Furnishers Corporation and Mr. H. M. Schumaker as Secretary. I think the agreement deals with the situation wherein the parties interested in the American Home Furnishers Corporation were undertaking to have each of the creditors accept serial notes in payment of their respective claims, including all members of the syndicate which made the loan of $1,500,000.00 to the American Home Furnishers Corporation. The agreement was subsequent to the alleged confession and subsequent to the investigation of Haskens and Sells and [fol. 84] Sanderson and Porter. Sanderson and Porter was retained by Mr. Hugh W. Davis acting as Special

Counselor to make an investigation of the assets and liabilities of the company after Schreffler's confession. Subsequent to their engagement a "creditors committee" was formed and the "creditors committee" undertook to get a man by the name of Benesch to run the corporation. Before Mr. Benesch would say "Yes" or "No" they wanted Haskens and Sells through their Baltimore partner to make a complete investigation of the assets and liabilities and make a report to him for that purpose. After the report of Haskens and Sells was received and filed the agreement dated June 25, 1923, was entered into. I am not positive nor can I testify from memory or recollection the exact date it was executed, or whether it was executed before or after Sanderson and Porter and Haskens & Sells last report was filed. My recollection is that as soon as the seriousness of the situation was thoroughly appreciated, the first thing that the holders of the serial notes had to agree to do was to extend their maturity.

Q. The agreement was executed not only after the alleged confession of Shreffler but after knowledge of that confession was had, not only by your client and principal, but all the other creditors.

Mr. Hicks: I admit that as to all three.

A. I do not know that all of the creditors of the American Home Furnishers Corporation ever knew Shreffler's confession was told to the syndicate that participated in part of the serial notes and they had knowledge of the confession when they signed the agreement date- June 25th, 1923.

By Mr. Brandt:

Q. Everybody then agreed with the creditors of the American Home Furnishers Corporation to take serial notes in settlement of their claims?

A. I would say everybody agreed to this as set out in this agreement.

I became a Director of the American Home Furnishers Corporation after the consummation of the issue of $1,-[fol. 85] 500,000. The issue was had upon the understanding that I was to become a Director and supervise the financial policies of the company. I was not to dictate the finan-

cial policies but was to advise concerning them and it was understood that nothing of any substantial character involving any financial policy was to be consummated without my knowledge and opportunity for expressing my opinion about it. I would not say that I was the financial dictator, but I was to be advised and given every opportunity to accept or reject and to advise whether to accept or reject. At that time Mr. Harry Levy was not relieved of either the financial or mercantile responsibility of the corporation. At the time of the execution of the agreement dated June 25, 1923, (filed as Exhibit "E") we did not know, never had known, and do not know to this day, the true financial condition of the American Home Furnishers Corporation.

Q. You did know of the investigations, and you had the report of Sanderson and Porter and Haskens and Sells?

A. Yes, but I am not sure of that.

Mr. Hicks: I have the report and will put it in.

Mr. Brandt: I offer this in evidence as Exhibit "F", dated July 10, 1923, of the condition as of April 30th, 1923.

By Mr. Brandt:

I have no recollection whether the Board of Directors of the American Home Furnishers Corporation or any of the officers of that corporation were directed or authorized to report after Shreffler's confession the condition of the corporation to the creditors of the American Home Furnishers Corporation. I do not know whether in point of fact the confession of Shreffler was ever communicated to the creditors of the Corporation. After the Shreffler confession and its confirmation by the other officers of the corporation, it was perfectly apparent that the American Home Furnishers Corporation was insolvent and in a precarious position. A sub-committee had previously been appointed to get in touch with the largest creditors of the serial note holders and to organize a creditors' meeting, in [fol. 86] order to save the corporation, if possible, from bankruptcy, and what we did subsequent to the confession was to co-operate as fully as we could as creditors of the American Home Furnishers Corporation, and afterwards as members of the creditors committee, to save the company from bankruptcy by putting through the extension agreement.

At the time of Shreffler's confession the Industrial Finance Corporation held a substantial portion of the receivables as collateral or acceptances previously discounted and the balance due the syndicate of $1,500,000.00 issued was approximately $1,000,000.00.

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VERE BROWN, a witness on behalf of the Objecting Creditors, being duly sworn, testified as follows:

By Mr. Hicks:

In the spring of 1922 I was Vice-President and General Manager of the Industrial Finance Corporation. Early in 1922 Mr. Levy, Mr. Schumaker and Mr. Shreffler visited New York to negotiate with the Industrial Finance Corporation with reference to the financial needs of the American Home Furnishers Corporation. Subsequently over a period of many weeks they made many visits to New York, remaining there a day or two to a week at a time. During that period, on each of the visits I spent a great deal of time discussing with Mr. Levy and Mr. Schumaker, and occasionally with Mr. Shreffler the balance sheet and operating statement, and all the detailed statements relative to the items and balance sheets, and the general operating statements. I went over all of the statements with Mr. Levy and Mr. Schumaker together. There was no detail of the statements that I did not go over with both Mr. Levy and Mr. Schumaker. I cannot state whether Exhibit "A" was shown to me at that time. The statements furnished by Haskens & Sells were substantially in accordance with all the statements and balance sheets which Mr. Levy and Mr. Schumaker furnished us during the early part of 1922. Exhibit "D" was received by me and subsequently the note issue was put out.

I was present at an interview that took place at the Trust [fol. 87] Company in Norfolk sometime in the spring of 1923, when Mr. Shreffler's so-called confession was made. I was present when Mr. Shreffler made his confession and subsequently when Mr. Levy and Mr. Schumaker were called into the room, and Mr. Morris in particular catechized them with reference to the confession made by Mr. Schreffler. Mr. Shreffler stated at that time that the inven-

tory had been overstated and that the accounts receivable had been also largely overstated. He said that he could not give the exact figures but indicated that they were large. He said said the inventory would not be less than $250,000 overstated and gave the same figures as to the receivables, that the shortage collectively would be substantially more than the sum of the two amounts. He said that the inventory as a whole had been inflated by transferring goods from the Grandy warehouse to the big warehouse in Norfolk, taking goods in the stock at the Norfolk warehouse and leaving them in the stock of the Grandy warehouse. That was his explanation of how that inflation occurred and of how the balance sheet was done.

Cross-examination.

By Mr. Brandt:

I do not recall any statements made by Mr. Shreffler on that particular occasion as to when the inflating of the inventory was done. The confession was made some considerable time after the loan of the $1,500,000.00 had been made, and after the Industrial Finance Corporation had begun the financing of the receivables of the American Home Furnishers Corporation. When the Industrial Finance Corporation began to finance the receivables of the American Home Furnishers Corporation, the Industrial Finance Corporation was furnished with a statement every month. Prior to the issue of the $1,500,000.00 statements of every kind as to every detail of the corporation's operations was submitted to us by Mr. Levy and Mr. Schumaker. I cannot say which of the statements were filed with us, but the statement marked Exhibit "D" is the one on which we promised to extend credit to the corporation. Prior to the submission of this audit and balance sheet, however, we gave some temporary advances.

[fol. 88] Q. In other words the statement dated September 11, 1922, is the statement upon which all of the financing was done either by the underwriting syndicate or the Industrial Finance Corporation for the American Home Furnishers Corporation?

A. That is substantially true.

Q. Now it therefore follows that the statement dated May 31st, 1922, signed by Mr. Shreffler was not absolutely relied upon by your company in either extending credit by way of $1,500,000.00 underwriting issue, or by way of financing the time sales?

A. Not absolutely relied on? We relied necessarily upon the representations made to us by Mr. Levy and Mr. Schumaker and the statements made over to us during the period I have spoken of. We agreed, on the strength of the information given us at that time, that we would extend them the desired credit, provided we had an audit made by the firm of Haskens and Sells, and that audit verified or practically verified the statements they had previously made to us.

Q. You, as a condition precedent to the $1,500,000.00 financing required the audit of Haskens and Sells, did you not?

A. Yes. We did not have at that time any physical examination of the assets made by Sanderson and Porter.

Mr. Morris was elected a Director of the American Home Furnishers Corporation on the understanding that he would act as financial adviser for the corporation. Mr. Harry Levy was coming to New York when financial advice from Mr. Morris was desired.

At the time the $1,500,000.00 was loaned, the syndicate knew that the issue of 8% preferred stock was outstanding and that the American Home Furnishers Corporation was largely indebted to the local banks in Norfolk.

Q. Did you have any personal interview, or anybody representing you, with the local banks in order to ascertain the general situation of the American Home Furnishers Corporation, that is the financial situation, and to ascertain what you could about the officers and directors, and, in other words, did you investigate by consulting others, and the local banks use any other source of information in addition to the representations of Mr. Levy?

A. Mr. Morris spent considerable time in Norfolk investigating all these matters, and checking up.

[fol. 89] Q. Mr. Morris reported back to the underwriting syndicate?

A. He conveyed to the underwriting syndicate, at the time of the negotiations what he knew about the American Home Furnishers Corporation.

Q. As a result of his investigation, and as a result of his personal knowledge, is that correct?

A. That follows.

Q. And he had undertaken to investigate the American Home Furnishers Corporation prior to the audit of Haskens and Sells?

A. What do you mean by "undertaken"?

Q. Personally he made an investigation. That was an undertaking, the making of the investigation?

A. He investigated the situation, yes.

Q. That was an undertaking on his part?

A. Well, I suppose it was an undertaking. It turned out to be some undertaking.

Q. He reported back to the syndicate, in addition to which he required the audit?

A. What do you mean by "reported back"? He reported forward. He made the investigation to get the information and he had to go forward before he could report back.

Q. Mr. Brown, my English may not appeal to you but I think you know what I mean?

A. I don't know what you mean, and I wanted to understand the question.

Q. Mr. Morris made an investigation?

A. Yes.

Q. And reported the result of that investigation to his associates?

A. Yes, sir.

Q. In addition to that investigation Haskens and Sells made this audit for your syndicate, did they not?

A. They made the audit at the request of the Industrial Finance Corporation.

Q. For the benefit of the syndicate?

A. It was used for the benefit of the syndicate.

By Mr. Hicks:

Q. You mean for the benefit of the corporation. You mean Haskens and Sells made report for the benefit of the

Industrial Finance Corporation or for the benefit of the American Home Furnishers Corporation?

A. They made the investigation as the result of the condition they made to Levy that they should make an audit, with the understanding that we should be supplied with the audit.

Q. So the American Home Furnishers Corporation could [vol. 90] get the money?

A. So we could arrange for the financing which the American Home Furnishers Corporation required.

By Mr. Brandt:

Q. So you could satisfy yourselves, and based upon the report of Haskens and Sells, in whom you had absolute confidence, the conditions were as represented?

A. We had as much confidence in Haskens and Sells as we would have in any firm.

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R. S. WAHAB, a witness on behalf of the Objecting Creditors, being duly sworn, testified as follows:

By Mr. Hicks:

I am an auditor and accountant but not a certified public accountant. I have worked for a firm of public accountants. I started in the employ of the American Home Furnishers Corporation in February, 1923. My first work was in connection with investigating and revising the records of the Grandy Manufacturing Company.

By Mr. Brandt:

Q. By whom were you employed?
A. Mr. Robert B. Shreffler.

By Mr. Hicks:

Q. What position did he occupy?
A. At that time Assistant Treasurer.
Q. Who was President of the Corporation at that time?
A. Harry Levy was President.
Q. Mr. Schumaker was Secretary?
A. Yes, sir.

Mr. Brandt: Do you propose to examine him about matters while in the employ of the American Home Furnishers Corporation?

Mr. Hicks: Yes. Why not?

Mr. Brandt: I will ask your Honor to strike it out.

[fol. 91] By Mr. Hicks:

I was called to work by Mr. Shreffler on February 18, 1923, to assist him on some of the audit work, and went first of all to revise the records of the Grandy Manufacturing Company.

Q. Did they turn over to you the records?

A. They turned over to me all the books—part of the books of the Grandy Corporation were kept in Norfolk. The executive office and part at the Newport News plant. They were very satisfactory, and I looked over the books and found they were inadequate to give all the costs, and I looked through more papers for other data.

Q. You had access to all the files?

A. Yes, and to Mr. Shreffler's records as Treasurer.

Q. I will hand you a paper marked "File G. B. N." Look at that paper and state whether you found that paper amongst the records of the Grandy corporation?

A. Yes, I found that among Mr. Shreffler's working papers.

Q. Now, then, I ask you what is the character of that paper?

By Mr. Brandt: He don't know what it is.

A. I found this paper. It is a paper that was kept by Mr. Shreffler, in his own handwriting, of the true inventory of the Grandy Manufacturing Corporation, and a book inventory showing the difference between the true and book inventory as of January 1, 1923, kept in Mr. Shreffler's handwriting. I found this during my audit and kept it, and carried the scheme out April 30th. The report was dated April 30th, in order to determine at that time and apply the difference between the book inventory and the alleged inventory.

Mr. Hicks: It is a private memorandum showing the true state of facts.

By the Court:

Q. Did you find it among the papers of the American Home Furnishers Corporation?

A. Yes, sir, the papers of the Grandy Manufacturing Corporation.

Q. Do you know that paper belonged to the papers kept by the other corporation?

A. I showed this to Mr. Shreffler.

[fol. 92] Q. Did you make any figures on it?

A. Beginning in March I extended it for March and April. January and February Mr. Shreffler had carried it to March, Mr. Shreffler had kept it, and I carried it out March and April, as my audit was dated April 30th and the date did not conflict at that time.

Mr. Brandt: Your Honor has in mind that I am objecting.

The Court: I understand that you are to go over the record and make your objections.

By Mr. Hicks:

Q. Now, taking that paper, which I offer as Exhibit "G", will you state what were the true assets as shown by that statement, in the various months which it covers, and book assets?

By Mr. Brandt: Bearing in mind it was a year after.

A. January 1, 1923, inventory and factory carried separately into three elements, raw material, working process and finished goods. January 1, 1923, the true inventory of the raw material, as per Mr. Shreffler's figures, amounted to $109,417.09. Carried on books $193,794.19. Inventory of process January 1, 1923, true inventory $134,689.30. By the books $287,929.81. Finished goods January 1, 1923, true inventory $209,370.53. Books $495,662.99, an aggregate difference of $501,000.00. I kept the record, as I explained, up to April 30th.

Q. On April 30th you made a physical inventory yourself of the property of the Grandy Manufacturing Corporation?

A. On April 30th I did not make a final inventory, but set up the difference on the books, set up a difference in-

dicated by the method in taking the cost of the goods sold and the proceeds, and that was $484,000, which is the approximate amount of this sheet, of April 30th. The report made by Haskens & Sells, wherein they, with Sanderson & Porter, showed a difference of $50.00.

Q. Those figures show the discrepancy of the Grandy assets?

A. $484,000. April 30th.

Q. Those figures were confirmed by physical examination [fol. 93] by Haskens & Sells and Sanderson and Porter?

A. Around $50.00 difference taken April 30th.

Q. Did you take the books, the books as of April 30th, the proceeds of sale between that time and September 30, 1922, and January 1st, as shown on the papers which you have there?

A. Yes.

Q. Please give those figures?

A. 1922, I worked backward on the basis of the proceeds of sales and the inventory maintained by the American Home Furnishers Corporation $269,624.59. Grandy showed an inflation of $222,618.23. That is based upon the purchases and sales during that interim. Haskens & Sells' report of audit, dated April 30th, which showed the Grandy Corporation, the American Home Furnishers and the Levy Realty, that is the first time, to my knowledge, that I had ever been able to find any kind of report which disclosed the actual condition, because their report is the only report in which Haskens & Sells, and Sanderson & Porter were duly authorized and took the physical inventory, and scrutinized the inflation of accounts receivable, showing the difference in the inventory and showing Haskens and Sells' report as compared with the inventory.

Mr. Brandt: I object. He is taking information as an employee of Harry Levy and Mr. Schumaker that he now claims to have gotten in that way, and is using it for the benefit of his present employer.

The Court: The objection is overruled.

A. (Continuing:) Take Haskens & Sells' report as of April 30, 1923, showing the extent to which the inventory was inflated, and at that time it showed $269,624.59 as of June 30, 1922.

By Mr. Hicks:

Q. That is in what?

A. The American Home Furnishers Corporation.

Q. What in the Grandy?

A. $222,618.23.

Q. That only deals with the inventory?

A. The merchandise inventory of the American Home Furnishers Corporation and the raw material of the Grandy Manufacturing Corporation, and the inventory in process and finished goods of the Grandy Manufacturing Company. [fol. 94] Q. Taking the two together what does that amount to in the consolidation?

A. $492,242.82 as of June 30, 1922.

Q. For the enlightenment of the Commissioner will you file a statement showing month by month those figures?

A. That would require work on my part, Mr. Hicks.

Q. Now, Mr. Wahab, you did not have anything to do with the audit taking inventory of the American Home Furnishers Corporation at the time it was taken by Haskens & Sells?

A. I collaborated with Haskens & Sells, working for them.

Q. Who were those men?

A. Mr. Dykes, H. A.

Q. You were there working at that time?

A. Yes.

Q. Working for the general creditors of the American Home Furnishers Corporation at that time?

A. Yes.

Cross-examination.

By Mr. Brandt:

Haskens & Sells worked in conjunction with Sanderson & Porter and took the inventory as of April 30, 1923, reflected as of that date. I was not employed by the American Home Manufacturing Corporation when Haskens & Sells' first report was made. I only examined the portion of the books dealing with the physical inventory, to get the information which I testified to today. Those books were the same books that Haskens & Sells had in 1922.

They had access to the same books. They did not have the same opportunity and the same means and the same material to examine. My report discloses these differences and discloses the physical inventory which Haskens & Sells did not have in 1922.

Q. The report of April 30, 1923, however, shows the condition as of April 30, 1923?

A. Yes.

Q. So that the lapse of time between the 11th of September, 1922, a report from May 1st to June 30, 1922, between June 30, 1922, and June 30, 1923 was a year in which there were changing conditions?

A. Conditions were changing to this extent, there were the records of invoices given as merchandise purchased and sales recorded as sold in that interim and simply made this multiply.

[fol. 95] Q. You had also the same kind of records kept for the period preceding the 30th of June, 1922, as well as kept for the period beginning June 30, 1922, and ending June 30, 1923?

A. Not the same.

Q. What was the difference?

A. The record was not as systematic.

Q. When did you begin to keep the records?

A. I never kept the records.

Q. When did you begin to examine them?

A. February, 1923.

Q. Just prior to the bankruptcy, somewhat prior?

A. Seven or eight months.

Q. This sheet you have got in your possession, is that a part of the records that were delivered to the receivers in bankruptcy?

A. This had nothing to do with the receivers in bankruptcy.

Q. It was on hand at the time of the appointment of the receivers?

A. This was on hand in the files.

Q. You got possession of it by virtue of your employment down there, didn't you?

A. I got possession of it by virtue of the fact that it was part of my working papers and turned over to me by Mr. Shreffler.

By Mr. Brandt:

The notation "G. B. N." on Exhibit "G" was the letter file. The report marked Exhibit "G" is in Shreffler's handwriting. Substantially all of the books that were in the hands of the receivers were in the office of the American Home Furnishers Corporation at the time of the Haskens & Sells audit. I had no difficulty in finding the books covering the period from June 30, 1922, to June 30, 1923. Such as they were, they must have been accessible to Haskens & Sells. I got possession of the paper marked Exhibit "G" the latter part of April, 1923, and it has been in the files over which I had supervision ever since. I was employed by the American Home Furnishers Corporation at first and afterwards employed by the Credit Detective Committee and then by the Receiver and the Trustee. I am now employed by the general Stores Corporation, which corporation purchased the assets of the American Home Furnishers Corporation in bankruptcy. I have done no work whatever for the Industrial Finance Corporation. About a month ago I was asked by Mr. Hicks whether or not there were any records showing the dif-
[fol. 96] ference between the book and true inventory at the time of the $1,500,000 note issue, and I was asked to make a statement. I told him I would look through the records and would be glad to give him any information I could find. In looking through my working papers I came across the paper marked Exhibit "G" and, considering it relevant, submitted it. I was never asked by Mr. Levy to get any information for him that would clear up this situation for him. I was never asked to get for him information that would give him light on what Mr. Shreffler had done. I never got information for Mr. Levy when he was charged with having misrepresented things, nor did I get information for his counsel to prove that he did not misrepresent facts. Whatever statements I have prepared may well, if in existence, speak for themselves.

H. A. Dykes, a witness on behalf of the Objecting Creditors, being duly sworn, testified as follows:

By Mr. Hicks:

I am a certified public accountant with Haskens & Sells' Baltimore office. I was connected with that office in the spring of 1923. I was the accountant in charge of the audit of the affairs of the American Home Furnishers Corporation made as of April 30, 1923. Exhibit "F" appears to be a copy of the report made as the result of said audit of April 30, 1923. At the time of the audit a physical inventory of the property of the corporation was taken in conjunction with Sanderson & Porter. Exhibit "F" reflects the true condition from the physical inventory. We found that the difference between the statement, as shown on the books, and the physical inventory as taken by us, to be $294,000 for the American Home Furnishers Corporation. The report does not show the discrepancy for the Grandy Corporation. The report shows the accounts receivable of the American Home Furnishers Corporation in the amount of $1,000,000 to be worthless. In making up the audit we set up a reserve for these accounts because a portion of them consisted of instalment accounts upon which there had been no payments for a long time prior to the date of the audit.

[fol. 97] Cross-examination.

By Mr. Brandt:

I was a representative of Haskens and Sells, directly in charge of the work resulting in the report of June 11, 1923. That report was a report based on the physical inventory taken by Sanderson & Porter in conjunction with us. As far as the inventory is concerned, the report is the result of the effect of both. As far as the report of assets and liabilities is concerned the report is the result of investigation made by Haskens and Sells. The report shows the true condition as of April 30th, 1923, as far as can be determined.

Mr. Hicks: Our case is complete with the exception of this report, which I am willing to submit and send to the Commissioner.

Mr. Brandt: I want to move to strike out these objections filed, in this stage of the evidence. I would like to argue that motion today. My position is that under the practice in the Federal Court I think it is properly a proceeding in equity, and I can now make a motion for the dismissal of this whole matter, and if that motion is denied I have the right to put on testimony.

The Court: At this stage, I am going to admit it. I would not break off a matter that you have practically had up before the Judge, as he would send it back to me. I have heard enough in it to hear further testimony.

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W. A. Godwin, a witness on behalf of the bankrupt, being duly sworn, testified as follows:

By Mr. Brandt:

I am and was in 1922 President of the Norfolk National Bank. I was a director of the American Home Furnishers Corporation and was connected with that corporation in such capacity during the course of the negotiation between the Industrial Finance Corporation and its associates, who [fol. 98] were the underwriters of the series of trust certificates aggregating $1,500,000.

Q. Do you know whether or not there was caused to be made, for the benefit of the underwriters, an investigation of the affairs of the American Home Furnishers Corporation, and who made that investigation?

A. The affairs of the books?

Q. Yes?

A. Haskens & Sells.

Q. Can you approximate how long, or how much time was consumed by that firm in investigating the affairs of that Corporation?

A. I believe it was six weeks or two months all together.

Q. Can you tell us whether or not the issue of $1,500,000 trust certificates was predicated upon the report of that concern?

A. I believe it was.

Q. Was that investigation to be made as a pre-requisite to the acceptance and purchase of these certificates?

A. I imagine it was.

Q When you say you "imagine it was" what general understanding in that behalf did you have, as officer, of the financial condition of that corporation?

A. I think they relied on Haskens & Sells' investigation.

Q. In making that statement, can you tell us whether or not such an investigation was called for by the firm of Haskens & Sells by the Industrial Finance Corporation, and its associates, as a prerequisite to making the loan?

A. I could not say that.

Q. You knew that the Industrial Finance Corporation, and its associates, did require Haskens & Sells' report and investigation before the loan?

A. I could not say positively.

Q. Had you had any discussion with respect to that matter, as an officer or director of the American Home Furnishers Corporation?

A. I don't think so.

Q. You know, however, it was done?

A. Yes, sir.

Q. And you know, however, it was required by the underwriters?

A. To the best of my knowledge and belief.

Q. Now, Mr. Godwin, were you present at a so-called meeting of the officers of the American Home Furnishers Corporation, held in June or the latter part of May, or early in June, 1923, at the officers and directors' room of the Trust Company of Norfolk, at which meeting Mr. Arthur J. Morris, Mr. Vere Brown, Mr. Tazewell Taylor, [fol. 99] Mr. Kerr, Mr. Davis, and a number of other gentlemen were present?

A. I was there.

Q. Can you tell us what you know about a supposed or alleged confession by a man named Shreffler, who occupied the office of Assistant Treasurer?

A. At this meeting at the Trust Company of Norfolk in May they discussed the facts, and in talking so much about the American Home Furnishers Corporation, Mr. Shreffler touched me on the shoulder and asked me to come outside, which I did, and he said "I think I ought to tell you something." He said "The receivables and the inventory of this concern have been padded," and I said "My Lord, why

didn't you say that before? Why haven't you said that before to somebody." He didn't say anything, and then he said "I thought you ought to know it." I stepped inside the door and motioned to Mr. Kerr to come out, and I told him about it and then I think we called Capt. Tazewell Taylor, and finally several came out there, and Mr. Shreffler made that statement.

Q. Mr. Shreffler repeated the statement?

A. Yes, sir.

Q. Was Mr. Harry Levy present when that statement was made?

A. I really don't remember.

Q. Did he come into the meeting before Shreffler left, when the statement was made?

A. I think he was there, but I could not recall to save my life.

Q. On that day was he made acquainted with Shreffler's supposed or alleged confession?

A. If he was there he was made acquainted.

Q. It has been claimed that Mr. Levy and Mr. Schumaker came into that meeting, and Mr. Shreffler repeated his statement to Mr. Kerr, and Mr. Morris began to catechize Mr. Shreffler. It has been claimed that this catechizing was done by Mr. Morris, and I will so call it. Mr. Levy and Mr. Schumaker came in?

A. I know Mr. Schumaker was there. I cannot recall Mr. Levy.

Q. Can you tell what explanation Shreffler made for having padded these accounts?

A. Someone, I cannot say who, asked the question, "Why did you do this," and he said that Mr. Schumaker told him to do it.

Q. Did he ever claim that Mr. Levy told him to do it?

A. I don't think so.

Q. You were there?

A. Yes, sir.

Q. You think you would have remembered such an im-[fol. 100] portant matter as that?

A. I believe I would.

Q. It has been testified here that when this statement or confession was repeated in the presence of these gentlemen, and this man Shreffler was being catechized, Mr.

Harry Levy spoke up and said "Yes, he would assume his share of the responsibility, and that he did it for the Corporation, and not for himself." Did anything of that kind occur?

A. I don't remember.

Q. If it had occurred do you think you would have remembered it?

A. I think so.

Q. You have had 25 years' association with Mr. Harry Levy?

A. Yes.

Q. Have you ever had occasion to doubt a statement he made to you?

A. No, sir.

Q. Have you ever had occasion since?

A. No, sir.

Mr. Hicks: I move to strike all of that out as thoroughly immaterial, improper and irrelevant.

By Mr. Brandt:

Q. If such a statement or admission had been made by Mr. Levy, as it is claimed, in your presence—you were there when Mr. Morris was there?

A. Yes, I was.

Q. Do you think it would have been possible for you to have forgotten it?

Mr. Hicks: I object to such a hypothetical argument with the witness as that.

Mr. Brandt: That is not hypothetical.

By Mr. Brandt:

Q. Was any such statement made by Mr. Levy in your presence?

A. Not to my knowledge. I don't remember such statement.

Q. I will ask you whether or not an admission of that kind by Mr. Levy would have been regarded by you as a very vital thing?

Mr. Hicks: Objected to as irrelevant, improper and leading.

The Court: I don't think you ought to ask him that [fol. 101] any more. He has said he did not have any recollection of such statement. It is negative.

By Mr. Brandt:

Q. Can you state positively whether or not Mr. Shreffler stated who had directed him to make these changes in order to bring about this apparent condition of assets in this corporation?

A. He said Mr. Schumaker told him.

Q. Did he ever make the claim, in your presence, that Mr. Levy had any connection with that matter?

The Referee: He has answered that.

Cross-examination.

By Mr. Hicks:

Q. I understood you to say you did not remember whether Mr. Levy was present or not?

A. I said that.

By Mr. Brandt:

Q. Were you there during that entire meeting?

A. Yes, sir.

Q. You did not leave at all?

A. No, sir.

Q. That is the meeting at which Mr. Morris and Mr. Brown were present?

A. Yes, and Mr. Kerr, of the Trust Company of Norfolk, and Mr. Schriver, and some member of Hambleton & Company.

By Mr. Hicks:

Q. Mr. Kerr was there?

A. Yes, sir.

By the Court:

Q. Were all the negotiations in one room?

A. The conversation was in the directors' room of the Trust Company of Norfolk, about the financing.

Q. What I mean to enquire about is whether the directors' room connects with any other room, or whether the overflow part of you had consultation in one room, or did the meeting take place in any other room but that one?

A. The directors' room had an entrance into the hall and a small committee room, and Mr. Shreffler called me into the small room, and told me that the inventory and receivables had been padded.

[fol. 102] By Mr. Brandt:

Q. After that did Mr. Shreffler go back into the committee room with you?

A. I called Mr. Kerr out and afterwards everybody was discussing it.

Q. Did Mr. Morris question Mr. Shreffler in your presence?

A. I can't say.

Q. Did Mr. Shreffler repeat his statements to all concerned?

A. When the question was asked by whose authority did you pad these, he said "Mr. Shumaker."

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H. M. Kerr, a witness on behalf of the bankrupt, being duly sworn, testified as follows:

By Mr. Brandt:

I was in 1922 and am now president of the Trust Company of Norfolk. I have continuously occupied that position for about eight years. I was a member of the Board of Directors of the American Home Furnishers Corporation in May, between the period beginning January 1922 and ending at the time of the bankruptcy of that institution. I was present at a meeting of the Directors and various lawyers, held some time during the latter part of May or the early part of June, in the Trust Company of Norfolk, at which Mr. Arthur J. Morris, Mr. Vere Brown, Mr. Tazewell Taylor, Mr. Hugh Davis, Mr. W. A. Godwin, Mr. Shreffler and others were present. My impression is that Mr. Levy was present at that meeting and also Mr. Shu-

maker. The meeting was called, if I remember correctly, responsive to the urgent plea of the American Home Furnishers Corporation for more financial assistance. Mr. Hambleton, of Messrs. Hambleton & Company, of Baltimore, was present, and questioned Mr. Morris, Mr. Harry Levy, Mr. Shumaker, Mr. Godwin and myself, as I would say, very viciously, and was anything but pleasant.

That meeting had progressed for an hour or more, when I was sitting near Mr. Godwin. We had sent for Mr. Shreffler to get some figures, and he was there at the meeting. He came with all of his voluminous records and listened to this grilling, and having been grilled by Mr. Hambleton, I noticed that he touched Mr. Godwin on the shoulder and they withdrew from the room. Mr. Godwin, I [fol. 103] noticed at the door of the directors' room beckoning to me, and I went, and he said, "Mr. Shreffler, I want you to repeat to Mr. Kerr just what you have said to me," and he said, "I thought it was fair to tell you and Mr. Godwin particularly, that the merchandise and accounts receivable of this institution are padded."

Q. "Are padded"?

A. "Are padded." Well, the first action we had, we wanted to know what was the extent of that padding, and as it was "a bolt out of the blue." He suggested about, as I recall, half a million. It was then Mr. Godwin and I called Captain Tazewell Taylor out, and then Mr. Morris, I think, came next, and of course every one was tremendously exicted, and upset. It was decided Mr. Shreffler must make that statement to the men assembled in the directors' room. He did that, and then Mr. Morris took him in hand and gave him a very severe grilling, followed by Mr. T. Edwin Hambleton. I was very much dazed by the information. I had no idea such a condition prevailed. The darn Company had been audited and audited, and we thought everything was bomb proof, and then somebody, either Mr. Morris or Mr. Hambleton, who had been chief inquisitor, asked why it was done, and at whose suggestion, and Mr. Shreffler said Mr. Schumaker's, and then somebody asked Mr. Levy, who was unquestionably present, and my impression is nothing emanated from Mr. Levy. He looked utterly dazed, just as I felt. I know the utmost confusion resulted, and the shock of what to do, under the circum-

stances, precipitated out of a clear sky, and the order in which these various events or questions of what to do, and how to do it, I cannot recall how it was worked out, but ultimately a creditors' meeting was called.

Q. Did Mr. Levy make any statement then, or at any time during the course of that meeting that he would assume full share of the responsibility?

A. I can't recall Mr. Levy said a thing. He looked utterly dazed, as I recall it.

Q. Were you familiar with the negotiations leading up to the underwriting of the $1,500,000 of the serial note issue?

A. Only more or less so. I knew negotiations for financial relief, in the spring or summer of 1922, as I recall it, were being urged with Redman & Company of Philadelphia. [fol. 104] That whole matter was suggested and handled through Hugh W. Davis.

By Mr. Morris:

Q. You don't mean Philadelphia—you mean New York?

A. I will make the amendment and say New York. Mr. Levy had accumulated large bank loans and was very anxious to relieve the situation, and he had made numerous efforts to acquire considerable additional capital. As I recall, those negotiations were not had through me with Mesrs. Redman & Company. While these negotiations were pending, as I recall, Mr. Levy came to my office one day, and said he had run into on one of his numerous visits to New York, Mr. Morris and Mr. Brown—I am not sure exactly—and that he had discussed the situation generally with those gentlemen, and it was thought probable he could obtain a loan through the Industrial Finance Corporation, that they might handle it, and it would probably be more advantageous to the Corporation. He also contemplated the hitching up with the Morris plan bank with the various retail stores and making preparation to meet the needs of the corporation, and there was some discussion about the building through the Morris plan bank. Mr. Levy and Mr. Schumaker, it seems, were thoroughly solid on the idea of having additional facilities, and I think an informal conference of the American Home Furnishers Corporation

officers was called, at the corner of Main and Church streets. It was gone into to some extent, as to which would be the most advantageous to the corporation, and undertook with Shreffler to try to define the financial condition of the Company. This matter was discussed fully, and it looked as if the Corporation would be advanced considerably by the acceptance of a loan from the Industrial Finance Corporation, and finally a plan, as I recall, was drawn up and the Board acted on it, when finally presented. The agreement was the result of numerous conferences between Captain Taylor, I think—I am getting into the realms of conjecture—Mr. Morris, Mr. Brown, Mr. Levy, Mr. Schumaker and Mr. Hugh W. Davis a whole lot of them, and it was finally presented to the Board for adoption.

Q. Do you know whether, as a pre-requisite to that issue of $1,500,000 of serial notes, an audit was required to be made by Haskens & Sells?

[fol. 105] A. My impression was it was necessary to confirm statements issued by the Corporation by the accounts being audited by a properly certified accountant.

Q. Do you know that Haskens & Sells made the audit?

A. I do know they made one. I saw them around there.

Q. How long?

A. They were here about—through the month of August and part of September. It is hard to remember all of these things.

Q. You do know this thing was not made or actually handled until after the audit was completed?

A. I am satisfied of that.

Q. I would like to ask one more question. In Shreffler's so called confession did he fix the time when this padding took place?

A. Now, I have to go into the field of conjecture again; I am trying to give it historically. If it is not competent evidence——

By Mr. Brandt: The Court will rule on it.

By Mr. Hicks: Go right on.

A. I try to give things as near historically correct as I can. The time the darn thing occurred, whether April or May, 1923, or whether after the creditors' committee took charge, of which Mr. Morris, Mr. Brown, Mr. Eggles-

ton and myself—it was about thirty days after that. I am not sure, but my general impression is that Shreffler finally admitted that the first time he knew there was anything wrong with the figures, and that it was only a very small amount, was sometime in the summer of 1922, or early fall, that the amount was purely nominal, and the amount, as I recall—this is another conjecture—when we pinned him down he stated it resulted from the swapping of the location from Roanoke, Virginia, from a low priced rental to a high price, a better location than they had ever had, but it resulted in padding by the management of the inventory of about $60,000 or $70,000.

Q. At Roanoke?

A. Yes; I attached very little importance to that in my various talks with him. I thought in this large sales volume that this thing would be taken care of, and it had very [fol. 106] little signification. I think it was shown an accumulation of shortage began early in 1923, or somewhere along there, and then the volume became considerable. Everybody was trying to keep out and reach the figures that would keep the store from showing a monthly deficit. In all my talks with Mr. Shreffler I never could get at it. I don't believe he ever knew how much deficit there was. I think it was ascertained at the creditors' committee when we came in and took charge and had the inventories made.

Question. Did Mr. Shreffler or Mr. Schumaker ever at any time claim that any of this padding was done at the instance, or by the direction of Mr. Harry Levy?

Answer. I cannot recall any suggestion of that sort.

Question. It was always said it was done by Mr. Schumaker?

Answer. Yes, and he did not deny it.

By the Court:

I do not recall any words that were uttered by Mr. Levy at that meeting. Harry Levy, as I recall, did not say anything. Mr. Schumaker was not very voluble about that time. I can't, to save my life, recall Levy saying anything. He looked stunned and dazed at that meeting.

Q. He looked as if he was as much shocked as anybody there.

A. He was practically speechless.

The meeting continued pretty nearly all day. It convened in the morning and adjourned about six o'clock the same evening. I do not recall what time of the day it was that Shreffler made the confession. It was during the progress of the meeting, that I know.

Cross-examination.

By Mr. Hicks:

I have been familiar with the affairs of the American Home Furnishers Corporation since sometime in 1920. Mr. Levy was president of the company, the active president, in charge of the business. He was the whole shebang when we started off with the original financing in 1920. He was the merchandise financial genius of the enterprise. The difficulty was Mr. Levy undertook too much and could not do any of the jobs perfectly well. Beginning in 1920 the [fol. 107] deflation in the merchandise, and other matters, he had to concern himself more with the finances than anything else. He brought in Mr. Schumaker in either 1920 or 1921, as a man to take hold of the merchandise and sales and buying end of the corporation. He was the detail man and was supposed to take charge and relieve Mr. Levy, who could not handle so many of the details. Mr. Levy was to shape the policies of the company. The general stockholders of the company were Mr. Levy and Mrs. Esther Levy. They were the largest stockholders. The control was actually in Mr. Harry Levy. Mrs. Levy did not take an active part. The management was done by Mr. Harry Levy. I think Mr. Schumaker was a stockholder, to what extent I cannot say. He did not pay for his stock, it had to be charged off to profit and loss. That Schumaker had put some money in the American Home Furnishers Corporation, but I do not recall the amount.

Q. Now, as I understand you, the meeting which he testified to, took place in your bank?

A. In the directors' room.

Q. Do you remember whether Mr. Levy or Mr. Schumaker were there at the beginning of the meeting?

A. I don't recall. He may have had the preliminary meeting with Mr. Hambleton and discussed the general situation. It may be they were not there at the opening of the meeting. They were gotten there shortly after.

Q. Do you remember whether they were there before Mr. Shreffler's statement was made?

A. My Lord, they had been there some time. Shreffler came in after these gentlemen.

Q. Levy and Schumaker got there first?

A. My recollection is they were there when the meeting was opened. You ask me a question, but whether they were there, or whether they were sent for, I don't know. They were gotten there all right.

Q. You are certain they were there before Shreffler?

A. I am sure they were.

Q. They were in the room at the time Shreffler made his so called confession to Mr. Godwin?

A. Mr. Morris, Mr. Taylor, Mr. Godwin and myself insisted he make his statement to the meeting.

[fol. 108] By the Court:

Q. He made it to the whole meeting?

A. Yes, sir.

By Mr. Hicks:

Q. Mr. Levy was there at that time?

A. Yes.

Q. Did he repudiate knowledge of it?

A. He did not say one word, as I recall it. As I stated in my direct testimony, human memory is more or less uncertain. My recollection of it was that Mr. Levy looked just as I felt, thoroughly dazed, and incapable, almost, of speech. That was my position.

Q. That was all your surmise, as to what was in his mind?

A. Good Lord, I would not presume to say what was in his mind.

Q. He did not speak?

A. No, not that I recall.

Q. He heard it stated in his presence the books were padded, and yet Levy did not say he was innocent?

A. He did not. I stick to my original statement of that.

Q. Then Mr. Schumaker spoke up and said that he gave him the directions?

A. I don't know. I think he probably admitted that he had—Mr. Shreffler is the one who said he had gotten his instructions from Mr. Schumaker.

Q. Did Mr. Schumaker say anything?

A. I think the question was put to him by Mr. Morris and T. Edwin Hambleton, and I think Mr. Schumaker did say he was cognizant of the fact, and had approved it.

Q. Did he give his reasons for approving it?

A. I don't recall how that was. If that was gone into.

Q. Can you recall whether Mr Levy was there when Mr. Schumaker said he had approved it?

A. Absolutely. He was there during the whole of this discussion.

Q. And he never once said that he did not know it?

A. I am going to hark back, as I say my testimony has been given here, and I am trying to give my recollection.

By the Court:

Q. You don't recollect that he said anything, but his look appeared as if he was dazed?

A. Yes, sir.

By Mr. Hicks:

Q. You said he looked dazed, and created the impression that he was astounded, is that the impression you [fol. 109] wish to create, or not?

A. It is impossible for me to define just exactly when these statements were all made, and after the grilling by Mr. Hambleton, which had been quite severe of all the men who had been identified with this thing, Mr. Levy—it looked like Mr. Levy begun to shrivel up, whether from surprise, I did not analyze.

Q. You could not tell whether surprise or fear of detection or what?

A. I am bound to adhere to my former statement.

Q. You do not want to give the impression that he was sitting there like a baby, perfectly astounded?

A. You can't tell what is in a man's mind. You can't say what is in his mind.

Q. Now, you said in some of your conversations with Mr. Shreffler, that Mr. Shreffler told you that there was a shortage in June, or the summer of 1922, is that right?

A. It was not at this particular meeting. What I was interested to know was this. I will say, with all these statements and audits, I could not understand—with all of this

auditing and all of this checking, how a thing of that sort could happen without somebody catching it. What I wanted to get at was how it happened. I knew we had this man Shreffler, who had been an efficiency expert himself, and had been recommended by a bank from the Middle West, that he was A-1, and he was brought here to serve the interests of this concern. I don't know how many times the firm of Haskens and Sells audited this firm during his tenancy. The thing I was trying to determine was just what value an audit possessed, if these discrepancies existed at the time all of this auditing and checking was done, and why in the dickens could not it have been caught. Mr. Morris, Mr. Brown and all agreed that if we had known of this whole condition, it could have been averted. Mr. Morris was just as much interested in that.

By Mr. Hicks:

The first padding, as I understood from Mr. Shreffler, occurred in Roanoke. I do not recall the date. It was understood that somebody from the head office would go around and take inventory in the various stores, and I was very much surprised to learn that that practice had been abandoned. Store managers were permitted to take the [fol. 110] inventory, which was, of course, a wide open opportunity to anyone who wished to take advantage of it.

Q. When was that?

A. I think in the spring of 1922.

Q. When they stopped taking the audits, did they take an inventory?

A. Yes, Mr. Shreffler suggested it was in the interest of economy.

Mr. Shreffler described the shortage by saying that when the furniture was pulled and when they would have to take it back or something happened, they would take the furniture and put it back in the inventory and leave the amount in the accounts receivable, and a large part was accumulated in that way. I did not think that Shreffler was — very creditable sort of character. This was first discovered in the summer of 1922 or the early fall of 1922, in the Roanoke store, and Shreffler thought it could be made up during the Christmas holidays. I think Mr. Shreffler said

that he had discovered, that he had not made it. My recollection may be utterly faulty. He said that he discussed it with Mr. Schumaker and that Mr. Schumaker said to let it go on.

By the Court:

Q. Did he say he discussed it with Levy?

A. I don't recall. He certainly did not say he discussed it with Mr. Levy. I am not trying to shield Levy, but he told me he got his authority from Schumaker.

By Mr. Hicks:

Shreffler never referred to whether or not he had talked to Harry Levy about it. He said Mr. Levy was so worried about the finances of the company that he did not want to worry him about it, that he thought it was possible to pick up before the padding became too large, in the holiday trade, that they would make it up and appreciated that Mr. Levy was so upset about his finances that they did not want to upset him further.

By Mr. Hicks:

Q. Now, then, I get from you the impression that Mr. Shreffler told you that this padding was concealed from Mr. [fol. 111] Levy because they did not want to worry him.

A. He did not say concealed. I object to that. He said that he and Mr. Schumaker had decided that the amount was not sufficiently large and it could be caught up in the fall trade, and Mr. Levy was financially worried and they did not think it worth while to worry him any further.

Q. And this continued?

A. There was the continued accomulation. I never understood how much that accumulation was.

By the Court:

Q. You are referring to the fall of 1922?

A. 1923 I wrote him (Shreffler) to get additional information. As I understood it this first padding was during 1922.

I was interested in trying to develop from Shreffler when he first knew about the padding and how and why the thing

was not brought to the attention of the board of directors. It was never brought to the attention of the board of directors. I got from Shreffler that up to the fall, 1922, it was not large. After discussing it with Mr. Schumaker they thought it could be picked up in the fall business. They had the worst December, 1922, that the business ever had, and consequently did not pick it up, but apparently enlarged the padding thereafter. The whole scheme of the American Home was audited as of December 31, 1922, by Haskens & Sells, public accountants.

By Mr. Brandt:

The certified public accountants were Haskens & Sells.

By Mr. Hicks:

Q. Do you remember anybody saying anything to Mr. Levy at all?

A. I think a good many questions were asked Mr. Levy. I think Mr. Morris and I think Mr. T. Edwin Hambleton shot all sorts of questions at him.

Q. Do you know what questions they did ask him?

A. First about the financial condition before this disclosure.

Q. After the disclosure did anybody ask Mr. Levy any questions?

A. I think questions were asked Mr. Levy.

[fol. 112] Q. Can you recall any question asked Mr. Levy?

A. I could not to save my life.

Q. Can you recall whether Mr. Morris asked him any?

A. I presume he did. He was intensely excited.

Q. Do you remember any questions Mr. Morris asked him?

A. I could not say to save my soul.

Q. Do you remember whether Mr. Morris asked him if he knew of this padding?

A. I do know Mr. Morris denounced the whole outfit from Mr. Levy down, beginning with Mr. Levy, Mr. Schreffler and Mr. Schumaker. Mr. Morris had been closely in touch with them, and Mr. Morris felt naturally, as did the other men connected with this concern, this disclosure was sort of a personal reflection on each and every one.

Q. He denounced Mr. Levy?

A. Good Lord, I can't say what he said.

Q. Did he tell him he had imposed on him, was that the character of it?

A. I imagine it was.

Q. Did Mr. Levy refute the statement that he had imposed on Mr. Morris?

A. I don't think Mr. Levy had much to say. They were all talking there after Mr. Shreffler had made this confession and I do not recall that he gave any answer, or what was asked by Mr. Morris.

Q. Did Mr. Morris ask if he knew about it?

A. I could not tell you.

Q. Did Mr. Levy affirm or deny it?

A. He did not.

Q. Did Mr. Morris or Mr. Brown question Mr. Levy with having put this thing up?

A. They may have said it, as Mr. Levy was the head of the concern, and they may have said that.

Q. Did they charge Mr. Levy with it?

A. They may have.

Q. There is a difference between actual fraud and constructive fraud?

A. Yes.

Q. Was Mr. Levy, in your presence, charged by Mr. Morris, or by Mr. Hambleton, or by any other person with having perpetrated a fraud in the financing of the company, connected with the padding of the books?

A. I think he was denounced very freely by everybody.

Q. Was Mr. Levy himself denounced?

A. I think Mr. Levy, Mr. Shreffler and the others, and they were denounced freely. Everybody was indignant.

Q. Did Mr. Levy, in the course of that denunciation, repudiate that he had known of the padding?

[fol. 113] A. I don't recall what Mr. Levy said. I don't think he said anything. If he did I do not know what was said. There was the most intense excitement there, and every one was talking, and I cannot tell everything that was said. I do not think Mr. Levy said much of anything.

Q. Did you think he was an honest man?

A. I did, and I still do.

Q. Notwithstanding the fact that he did not repudiate any fraud under all these circumstances?

A. I am frank to tell you I felt greatly outraged about the whole thing. It reacted on me physically, practically put me out of commission for two years. I don't believe that Harry Levy is dishonest.

By the Court:

We all had seats at the meeting; we had no stenographer there. Mr. Morris at first was sitting at a table in one part of the room. After the confession Mr. Morris became excited and moved around and gesticulated. He virtually tore his hair. Mr. Taylor was there, and Mr. Vere Brown. I heard everything that was said in the room. The question is how much I can remember. There was plenty of talk going around and sometimes it was hard to say exactly what was being said. After the disclosure by Shreffler I think several talked at the same time.

By Mr. Morris:

Q. Do you recall that from the time you were called into the anti-room, Shreffler had gone in there with Mr. Godwin, and from the time that Shreffler had come out of the anti-room and made the statement before the general meeting, which you, Taylor, Godwin and I had heard, and after he had made it, that there were a number of conferences going on between the different people in the offices and in the anti-room, and that Captain Taylor and I for half an hour, or an hour were going from the anti-room back to the general room continually?

A. My recollection is that most of these conferences were in the directors' room, because Mr. T. Edwin Hambleton had made it exceedingly unpleasant for me, and I think that I was in and out after that performance, and Mr. Morris I thought most of us afterwards were in this room.

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[fol. 114] A. J. Morris, recalled, stated as follows:

I first want to make the statement that it is inexplicable to me that Mr. Godwin does not even remember whether Mr. Levy was present at any time during this conference,

or not. I say that for the following reasons: After Mr. Shreffler had made the confession privately in the anti-room Mr. Kerr, Captain Taylor, Mr. Godwin, and I concluded that he should come into the board of directors' room and repeat the confession openly before all the men present in the room. This Mr. Shreffler did. I thereupon said to the meeting, and to Mr. Kerr, and to Mr. Taylor and to Mr. Godwin, that "it is incomprehensible for me to believe the statement of Mr. Shreffler without confronting Mr. Levy and Mr. Schumaker with those statements." Mr. Levy and Mr. Schumaker were not then in the meeting, and had not been in the meeting if at all, for sometime before the confession was made. At the time Mr. Shreffler took Mr. Godwin into the anti-room, and at the time all of us returned to this room and had Mr. Shreffler make the statement in the open meeting, neither Mr. Levy nor Mr. Schumaker were in the room, and at that time that Mr. Shreffler made the confession in the open meeting, not one but half a dozen of them asked him the question, "Did Mr. Levy and Mr. Schumaker know of this padding," and he said "Of course they did. I acted under their instructions."

Mr. Brandt: That is objected to.

A. (Continuing:) When he made that statement I insisted on Mr. Levy and Mr. Schumaker being called at once to the meeting, without another word being said, and we telephoned for them and they came post haste to the meeting, and when they came to the meeting we had Mr. Shreffler—I first stated to Mr. Levy and Mr. Schumaker what Mr. Shreffler had stated to the open meeting, and I then turned to Mr. Shreffler and said, "Have I stated your confession correctly", and he said "You have", and in that statement I said to Mr. Levy and to Mr. Schumaker, "Gentlemen, Mr. Shreffler has said you knew all about this padding from the beginning to the end. What we want to [fol. 115] know is Mr. Shreffler's statement true." I first asked Mr. Schumaker and he said "Absolutely." I said, "Do you realize that in your confirmation of what Mr. Shreffler is saying you are agreeing to something that is criminal, and I could put you behind the bars," and he said,

"I realize that, but nevertheless it is true." I turned to Mr. Levy, in the presence of all the gentlemen in that room, and said, "Mr. Levy, what have you got to say about Mr. Shreffler's confession," and he said, "All that I have got to say, I take my share of the responsibility for it. I admit it is true. I can't give you the exact figures, but I am willing to take Mr. Shreffler's figures, but I want everybody to know that I did not do it to make a dollar for myself, but to keep this company afloat."

By Mr. Brandt:

Q. Did they say when the padding was done, did they fix the time it was done?

A. Mr. Shreffler, as I recollect, said the padding had been begun even before he came into the employ of the company, and that he had continued it after a conference with Mr. Levy, and Mr. Schumaker.

Q. Are you absolutely positive of that?

A. I am absolutely positive he said he had continued this padding with the knowledge and authority of Mr. Schumaker and Mr. Levy.

Q. I am asking you are you absolutely positive that it has begun before?

A. Yes, before he became employed by the company.

Q. Are you absolutely positive?

A. Absolutely positive.

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H. M. Kerr then stated as follows:

I don't want any conflict to come between Mr. Morris and myself about this thing. I stated the attendance of Mr. Levy and Mr. Schumaker, as I recalled it. I thought they were there before. I may be wrong or I may not. They were certainly there during the meeting, but as to the statement of Mr. Levy, Mr. Morris may be more correct than I am. I just want to state my recollection. I was [fol. 116] utterly excited and Mr. Morris more than I was. I don't know whether Mr. Morris' recollection is any better than mine.

HARRY LEVY, the bankrupt, being duly sworn, testified as follows:

By Mr. Brandt:

I am now in Florida, as a managing officer or managing director of the Seminole Products Company of Miami, Florida.

Q. Now, Mr. Levy, I want to get to the milk in the cocoanut. I want to ask you if you are familiar with a meeting, which was not a formal meeting of the directors, but a meeting of the directors and certain bankers and attorneys, held in the directors' room of the Trust Company of Norfolk, sometime during the latter part of April or early in May, 1922?

A. It was not a meeting of the directors, because I did not know there was any meeting going to be down there at all. I waited at my office, 19th and Monticello Avenue, all the morning until about—it must have been 2 or 3 o'clock, to hear from some message that I expected to get from the bankers.

Q. What about?

A. They had been figuring for a period previous to that, a period of thirty or sixty days, for re-financing the American Home Furnishers Company, and it was all in their hands.

Q. Who had charge of it?

A. Charge of it? Mr. Morris was the chairman, Mr. Hugh W. Davis was two, Mr. Eggleston of the Trust Company was three, and Mr. George Shriver, of Baltimore, was four, and I was the 5th one, so-called. That is why I expected to hear something from them, but I did not until later afternoon—I don't remember exactly, I would not want to say 3 or 4 o'clock, but I know in the afternoon, and I had the call to come up to the Trust Company, myself and Mr. Schumaker, and we got up there right to the 2nd floor, and there were right many people in session. I really could not say all of them who were there. There were those at the meeting that I have referred to.

Q. Tell if anything unusual happened there?

[fol. 117] A. When we got there the first—before we could even walk in the room, and just sat right down, Mr.

Morris—I don't know whether Mr. Morris, but I rather think it was to the best of my memory, asked the question of Mr. Schumaker did he know of the balance sheet that had been carrying a lot of, you might call, slow book accounts, might as well put it that way, for the figures did not correspond with the balance sheet that they had that Mr. Shreffler had told him at that morning session, and I can't recall, to the best of my memory I don't know whether Mr. Schumaker says "Yes, sir," or something like that. When I heard it it was just like a shot gun went through me. I am frank to say I don't believe I had good sense the balance of the day.

By Mr. Brandt:

As the result of that afternoon I was taken home sick. I had a doctor, because it was a great shock to me. Of course we had all been working on plans for refinancing. I agreed to do everything they asked me to do, and after a shock like that I didn't think I had my right good common judgment for several weeks. I had no idea anything like that was going on. I have put in American Home 30 years hard work, and this real estate. I agreed to put in the real estate on the new refinancing and every dollar of real estate I had. I did not have to put it in. It was entirely a separate corporation, the Levy Realty Corporation was not responsible for the American Homes, at all, but with the advice of my associates in the City here, for whom I have had the highest regard all of my life, and upon their advice I overpassed my own judgment and did everything I could possibly have done to save the corporation. If the corporation had not become connected with the Industrial Finance, the so-called Morris plan, during the year 1922, it would have been operating today. This the directors of the corporation and I realized in less time than 60 days after we were operating in the Morris plan. In the latter part of 1922 the bankers and Hambleton Company, of Baltimore, particularly, wanted to put a treasurer in the company, so that I could be relieved by him of a lot of work. I began to look around for a man and located a man by the name of Mr. Robert Shreffler, who was thoroughly familiar with the details of the furniture business,

[fol. 118] and a public accountant. I submitted his name to the bankers and likewise to the bankers of Baltimore, and they passed on him as to his standing or capacity to handle what we wanted him here for. They said I had picked a very capable man; I thought the same thing myself. After he got here I immediately put him as assistant treasurer, by which he had the power to sign all checks, all notes that the financial plan and auditing plan and every bookkeeper and the general chain of stores, or wherever it may be, working under the instructions of Mr. Shreffler. Mr. Schumaker was with me before Mr. Shreffler came, and he was general manager. Between him and Mr. Shreffler they figure it out they reli-ve me from responsibility of detail work, and from that time on I spent most of my time *on* in the stores and getting the proper volume of business, as business was not so good through the country and it kept me busy going around to each one to keep up the volume of business. As far as—that is right, it was 1921, I think it was somewhere the middle—(pause). I think the early part of 1921. When statements was asked for by the bankers Mr. Shreffler would go down and give them the statements, regardless of whether I was in the City or not. The latter part of 1922 it needed working capital more for this business, which I had to put up to my directors, and they put that off from the latter part of 1921 until the early part of 1922, we have decided to get new money, and through the suggestion of the Trust Company, for which Mr. Hugh W. Davis is attorney, they made up a trip to New York to see Redman & Company, and they immediately come here—(pause)—No, pardon me. He wired me, and I went with him, and after having a conference there the loan was granted, subject to some investigation.

That Redman & Company had suggested that Haskens & Sells of New York City make an investigation; that when the auditors came to Norfolk, that Levy was nearly all of the time out of the city—they were here ten or twelve days; that there was never one of them that sat down and talked to Levy; that they had all of the books and that Mr. Shreffler and Mr. Schumaker were there; that they had made a report to the New York office and upon a telephone message from Mr. Hugh W. Davis I went to his office and

Mr. Davis told me, "If you are ready we are ready to go [fol. 119] to New York and we can get the money." He was to get $1,500,000 for ten years from Redman & Company, less $150,000.

"During my negotiations with Redman & Company I met Mr. Morris certainly, and after having met him several times and after he got me to thinking that it is a better way in financing than Redman & Company would be the Morris plan in conjunction with the Industrial Finance. My directors in Norfolk, Virginia, at first they didn't think much of it, of the Morris proposition, but after Morris made several trips and had seen everyone of the directors individually they decided that his proposition was better than the proposition of Redman & Company. The negotiations with Morris—I call it Morris as the whole transaction was Morris. He come to Norfolk and went through the proposition himself several times. He would not ask me hardly any questions at all, but would go to the directors or to Mr. Shreffler, or to some other, but whoever he talked to or wanted any information, they would figure it out. They went to the books to figure everything, including everything.

"He even suggested he know about merchandise more than we did. And my making several visits to New York, Morris has never brought up any question in the past but what a great big proposition we were going to make. It was not one store—it was not one store, but one hundred stores, and I will say it truthfully that he had sold me that and I was sold. It was not a question of me financing any more, to bother with any more, no question of merchandise, nor goods, and would not worry about any money whatever. Then, on his last trip, when he got to Norfolk and met all the directors, and after he had explained to them thoroughly, they said it was a pretty good proposition to go in with Morris. In other words, Morris was to become a partner, you might say, in the American Home Furnishers Corporation, not only on the salary that he was drawing"—That Morris drew a salary of 1% of all the sales; that is, if the business reached $5,000,000, Morris would get $50,000; that he did not recall how much Morris received by such arrangement and was paid to Morris in-

dividually, outside of any funds on the loan and that he, Levy, further agreed to give Morris $80,000 or $90,000 worth of common stock of the corporation absolutely for [fol. 120] nothing; that the Industrial Finance Corporation knew nothing of this arrangement; that he felt that he was getting a good partner but that he realized within 60 days that it was a failure because the support that I was expecting to get was being postponed; that he called the attention of the directors to this condition and they suggested to wait and that he went along until the beginning of 1923, when the corporation began to have trouble with credit; that this continued until February or March, 1923, when a committee was appointed to refinance and to do away with the Morris plan. Haskens & Sells spent considerable time in Norfolk making their audit upon which the loan of $1,500,000 was made; that Morris loaned the corporation $1,500,000 upon his, Morris's, own personal investigation here, and that he made several trips here himself and worked as late as one o'clock at night and had the statement of Haskens & Sells, which had been prepared for Redman & Company and which Morris accepted after the American Home Furnishers Corporation had canceled their negotiations with Redman; that Morris did not make the loan upon any paper which Levy furnished him; that at the meeting held at the Trust Company, he did not admit to Morris or any one else that he knew that the assets had been padded and never made any such statement; that he did not know at that time that anything had been padded and had no idea that such was the case and when he found out, he was required to go to bed by reason of the illness; that at the time he saw visions of not only losing every dollar on earth which he had but also Mrs. Esther Levy, a widow; that he and Mrs. Levy had real estate worth $1,600,000 which had been appraised as such by very reliable people in Norfolk. In 1922 he and Mrs. Levy borrowed $550,000 as a first mortgage on their real estate holdings, at which time they had one mortgage of $190,000 on same; that out of the loan of $550,000 the debts of the American Home Corporation were paid; that he put up second mortgage bonds which he had of Levy Realty, without authority; that at that time the American Home had gotten too big for him to control; that Mrs. Levy nor the Levy Realty Cor

poration were endorser of any paper of the American Home Corporation; that if he had refused to put up any money that he and Mrs. Levy would still have had their real estate [fol. 121] holdings; that at a previous time he had borrowed money on other real estate holdings, which all went into the American Home Furnishers Corporation; that in 1920 he had 11,811 shares of stock in the American Home Furnishers Corporation—Mrs. Levy 8,901—Mr. Loth 4,288—Trust Company of Norfolk and associates of Hambleton at Baltimore 5,000 which together amounted to 30,000; that on July 6, 1920, the net worth of the business was $2,198,331.98; that Exhibit "A" introduced in evidence he judges must have come from the books of the American Home, he could not say that he saw the particular paper known as Exhibit "A"—there was nothing thereon to indicate that he had ever seen it; that he had never been with Shreffler in Morris' office in New York; that he was there with Schumaker on two or three occasions; that he never handed Morris a written statement showing the liabilities and assets of the American Home Corporation signed by Shreffler; that whatever Morris got he came down and got it from Shreffler; that Morris, without exaggeration, had been over the books at least one half dozen times—Morris had never asked him if Exhibit "A" was correct but that Morris never doubted any statement that he received from Shreffler and he was positive that Morris had never asked him about Exhibit "A." Morris used to come into the office and spend three or four hours with Shreffler, showing Shreffler how to get down the overhead cost, and what he, Morris, would advise in the future; that Morris solicited the loan from him and not he from Morris; that Morris introduced the subject of financing to him and invited Levy to come to New York. At that time he had the highest regard for Morris' judgment as a financier.

By Mr. Brandt:

That he made no representation of the business and accounts of the American Home Corporation upon which Morris intended making this loan; that Morris made his own investigation and that later on Haskens & Sells also made an investigation; that Haskens & Sells had already made one investigation on a previous bond issue; that

Morris and his associates would not lend the American Home Furnishers Corporation $1,500,000 on the faith of what he told him; that they investigated thoroughly and carefully; that if he had had no business dealings with Mor-
[fol. 122] ris and his associates, he would have been in business today, although there might have been a little hard struggle; that as a consequence of financing with Morris, all of the book accounts of the Corporation had been tied up; that he knew nothing of the paper marked "File G. B. N." introduced as Exhibit "G," that he had never seen the paper in his life; that he had never heard of any duplication until Shreffler made the statement—no one had ever told him of such a state of affairs until he heard it at the Trust Company; that his practice was that when a manager was not making his proper report in time, that they would get after the manager immediately and if such manager repeated it, their practice was to change the manager; that he had never in his entire career of 30 years repossessed goods which were put back in the stock as part of the inventory and leave such accounts on the books as a live account, although the books would occasionally be behind for a week or ten days; that he never deliberately did such a thing or permitted it to be done; that Shreffler handled the entire matter from the first day he became connected with the corporation until after Levy's connection with the American Home was at an end.

By the Court:

That Morris signed the letter which Mr. Davis dic-

[Line missing in copy.]

else's conversation or any papers until Haskens & Sells made their report and they turned that report over to the officers of Morris' company at that time; that Mr. Hugh W. Davis dictated a letter which was signed by Morris in which Morris accepted Haskens & Sells' report as satisfactory just as it was.

By Mr. Brandt:

That Morris signed the letter which Mr. Davis dictated, in which Morris said that he accepted Haskens & Sells'

report as to the condition of the American Home Corporation and based upon that report the American Home Corporation received the money; that Mr. Godwin executed the Indenture known as Exhibit "B" and Mr. Godwin also executed the mortgage, despite the fact that Morris claimed he was relying on the statement made by Levy.

[fol. 123] Q. Was there any time fixed at this meeting when this padding was done, did Mr. Shreffler say when this padding was done?

A. I was not present when Mr. Shreffler told that.

Q. You came in afterwards?

A. Yes, sir.

Q. Did anybody ask you whether you knew anything about it?

A. Morris is the only one like jumps right on you, and didn't see at first, and he asked Mr. Schumaker first, and then he asked me, you know, and I didn't know, and I was sitting down there looking at Morris, and looking at the devil. I saw it was my finish, my financial finish.

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E. E. Strickland, a witness on behalf of the bankrupt, being duly sworn, testified as follows:

By Mr. Brandt:

I was employed by the American Home Furnishers Corporation during 1922. I was also employed during the year 1923 by that company. I knew Mr. Shreffler, I was directly under him, I took orders from him. I took some orders from Mr. Schumaker along a different line, not on the books. That was after they opened the wholesale warehouse and I had charge of the credit for the wholesale house, and I took my orders from Mr. Schumaker quite a bit in reference to that. I was office manager. I would not say I am an accountant. I had charge of the books of the wholesale office, the warehouse books. I can remember an occasion, in January, 1923, when Mr. Shreffler gave me orders out of the ordinary. We took an inventory which was gotten out either in February or March 1923. Mr. Harry Levy had nothing to do with the instructions regarding that inventory and nothing that I knew of seemed to be said when

Mr. Levy was present at any time with reference to the instructions. At the time I was called to Mr. Shreffler's office and upon my arrival at the office I found that there was added to the inventory figures in the sum of $245,747.66, which figures were added to the inventory of the warehouse, 19th and Monticello Avenue. At the direction of Mr. Shreffler I acted, I do not know whether Mr. Schumaker knew anything about it or not. No one gave me [fol. 124] instructions except Mr. Shreffler. I acted strictly under Mr. Shreffler's orders and was doing what I was being told to do. The sum $245,747.66 represented merchandise that insofar as I knew did not exist, and I was in a position to know. Mr. Shreffler requested me to take two invoices, which were supposed to represent merchandise sold to American Home Furnishers Corporation and undelivered at Newport News warehouse, and to put the invoices through. I am positive that the inventory just spoken of was made in January, 1923, and that the padding was done in March 1923.

By the Referee:

The inventory was taken in January 1923 and the padding was done in February or March 1923.

By Mr. Brandt:

That was the first padding that I had any knowledge of and that was the beginning as far as I know. I had never heard of it being done before, and when I asked Mr. Shreffler "What are you going to do? You can't hide that much," Shreffler replied, "Don't cross the bridges until you come to them," and I never mentioned it to Mr. Levy or to anyone else.

By the Referee:

That was after Morris had gone away.

By Mr. Brandt:

I never saw Exhibit "G." It looks like it might be some figures gotten up on the Grandy Manufacturing Company. I am not in a position to say whether Shreffler had private working papers of that kind. He kept a number of papers

in his desk. I cannot say what "G. B. N." means. I had access to all the records of the company, all but the private ledger. I never had my hands on that. I do not know whether we had any such sheet as that upon which Exhibit "G" is written, unless it was some paper they probably had there—they had almost all kinds of stationery. I have never seen anything worked out in that way, even by Mr. Shreffler.

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[fol. 125] ORDER APPROVING STATEMENT OF EVIDENCE

The foregoing narration of testimony in the matter of Harry Levy, Bankrupt, is hereby certified to be correct, and the same is hereby approved.

D. Lawrence Groner, United States District Judge for the Eastern District of Virginia.

July 23, 1926.

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IN UNITED STATES DISTRICT COURT

ORDER DIRECTING THAT ORIGINAL EXHIBITS FILED WITH REPORT OF SPECIAL MASTER BE SENT UP IN ORIGINAL FORM—Filed July 27, 1926

On motion of the Appellant-Petitioner it is hereby ordered that the original Exhibits produced before the Special Master herein, and filed with the Report of the said Special Master, be forwarded in the original form to the Circuit Court of Appeals, to be used upon said Appeal and Petition for Revision, as if physically incorporated in the Record.

D. Lawrence Groner, U. S. District Judge.

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IN UNITED STATES DISTRICT COURT

EXCEPTIONS OF OBJECTING CREDITORS TO REPORT OF SPECIAL MASTER—Filed September 25, 1925

And now comes The Chatham & Phenix National Bank of the City of New York, the Metropolitan Trust Company of the City of New York, and The Industrial Finance Cor-

poration of 100 East 42nd Street, New York City, Creditors objecting to the discharge of the bankrupt, and through their attorneys, Satterlee & Canfield of 49 Wall Street, New York City, hereby except to the report of R. T. Thorp, referee in bankruptcy, dated the — day of ——, 1925, and [fol. 126] for cause of exceptions show:

First. That the referee in said report stated and found:

1. That the objectors have failed to show that the written statements relied on were materially false at the times they were made.

2. That they have failed to show that the money was obtained on any known false statement in writing made by Levy.

3. That the $1,500,000.00 was loaned by the objectors, not because of any statement made by Levy, but upon the audit made by Haskens & Sells, Certified Public Accountants, designated or accepted for that purpose by the objectors themselves.

4. That even if false the objectors have failed to show that Harry Levy had knowledge of their falsity, or in the matter of obtaining the money of the objectors for the Corporation Harry Levy acted otherwise than in good faith, therefore it is recommended that he be granted his Discharge.

Whereas, the referee, upon the consideration of all the testimony and the exhibits ought to have found:

1. That the objectors did show that the written statements relied upon were materially false at the times they were made.

2. That the objectors did show that the money was obtained on a known false statement in writing made by Levy.

3. That the objectors did show that the statement made by Harry Levy was false and to the knowledge of Harry Levy was false, and in the matter of obtaining the money of the objectors for the Corporation, Harry Levy acted otherwise than in good faith.

[fol. 127] 4. That the objectors have shown that Harry Levy obtained money on credit upon a materially false statement in writing made by him to the objecting creditors and their representatives for the purpose of obtaining credit from said objectors, and for this reason the bankrupt should not be granted his discharge.

Satterlee & Canfield, Attorneys for Objecting Creditors.

Dated September 24, 1925.

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In United States District Court

Memorandum of Court—Filed January 4, 1926

On exceptions taken by certain bank creditors to the report of R. T. Thorp, Referee in Bankruptcy, upon the application of the bankrupt for his discharge.

I have carefully reviewed the evidence in this case and have read and given due consideration to the report of the Referee. With great deference to the views of the Referee, I find myself obliged to differ with his conclusion.

I think it is impossible to read the evidence on the hearing for discharge and arrive at any other conclusion than that credit was extended by the objecting banks on the faith of statements in writing made by Harry Levy. I think it is equally impossible to arrive at any other conclusion than that these statements were knowingly false. It is true the statements were made by Levy as president of the American Home Furnishers Corporation, and that credit was extended directly to that company rather than to himself. It is equally true, however, that the banks required him to become endorser of the notes evidencing the money advanced, and that it is largely this liability which his own bankruptcy petition was filed to avoid and discharge. The American Home Furnishers Corporation was controlled by Levy; its entire capital stock was owned by himself and the widow of his deceased brother; he was in exclusive charge. [fol. 128] The company needed money badly to save it from shipwreck. Obviously, it could only obtain the money by

making a statement showing financial responsibility. Levy may have believed, and I have no doubt did believe, that if the money was furnished the company might weather the storm, and that his own investment as well as the loan he was seeking to obtain would be thereby secured. That the financial statement of the company's business was false in such a way as that he must have known it, is apparent. Both its statements of tangible and intangible assets were padded to a shocking extent, resulting in an apparent worth of several hundred thousand dollars more than was really true. The Referee accepted Mr. Levy's denial of knowledge of these facts, in my judgment, without proper evidence to sustain a conclusion of that kind. Perhaps it would have been better, in an effort to elicit the exact truth, if Mr. Tazewell Taylor, Mr. Hugh Davis and the Baltimore broker, Mr. Hambleton, all of whom were present when the padding of the books was admitted, had been called, because doubtless these gentlemen would have described convincingly what did occur on that occasion. They were equally available to both sides, so that no greater responsibility attaches to one than the other in not calling them. On the other hand. Mr. Morris's testimony is positive; Mr. Godwin's and Mr. Kerr's wholly negative. But whatever may have been Mr. Levy's attitude on the occasion in question, it would, in my opinion, have been quite impossible for the thing which did occur, namely, the marking up of the assets of the company in the neighborhood of a million dollars, to have occurred without his knowledge and approval. Certainly no one else had any object in doing it and, in the circumstances, he had every object in doing it. In my judgment the statements in writing, made to the bank, alleged to reveal the true financial condition of his company, were knowingly and purposely untrue, and were done with the object of obtaining financial credit which otherwise he would not have obtained. To grant to him a discharge from debts thus contracted would be to make a farce of those provisions of the law which contemplate, as the price of a discharge and acquittance of debt, a frank and honest disclosure on the part of him seeking relief. I do not think the law requires that the offence for which the discharge [fol. 129] is denied must have been committed in the bankruptcy in which the discharge is asked; and this is peculi-

arly true here, where the two are so intimately related and where the debt contracted in the one is sought to be discharged in the other; see In re Lesser, 234 Fed. 65.

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IN UNITED STATES DISTRICT COURT

ORDER SUSTAINING EXCEPTIONS OF OBJECTING CREDITORS TO REPORT OF SPECIAL MASTER AND DENYING DISCHARGE OF BANKRUPT—Filed May 21, 1926

[Title omitted]

Upon the petition of the bankrupt for discharge herein filed; upon the specifications of Chatham & Phenix National Bank of the City of New York, Metropolitan Trust Company of the City of New York, and the Industrial Finance Corporation of the grounds of their opposition thereto; upon the order of reference of the issues thereby raised entered on the 24th day of June, 1925, referring said issues to R. T. Thorp, Esq. as Referee in Bankruptcy; upon the report of said Referee in Bankruptcy, recommending the granting of said discharge, and the matters of exhibits and testimony accompanying the same; upon the specifications of Chatham & Phenix National Bank of the City of New York, Metropolitan Trust Company of the City of New York, and the Industrial Finance Corporation to said report; and upon the notice of motion of Harry Levy for confirmation of said report and after hearing S. M. Brandt, Esq., attorney for the bankrupt, in favor of said report and R. Randolph Hicks, Esq., attorney for the objecting creditors, in opposition thereto, it is

Ordered that said exceptions as to report of the Referee in Bankruptcy be and they hereby are sustained and said [fol. 130] report of the Referee in Bankruptcy correspondingly disapproved; and it is further

Ordered, adjudged and decreed that said discharge of said Harry Levy be and it hereby is denied.

D. Lawrence Groner, District Judge.

Dated May 21, 1926.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING PETITION TO REVIEW AND REVISE—Filed May 26, 1926

The Bankrupt herein having made application for revision in matter of law, by the United States Circuit Court of Appeals for the Fourth Circuit, of the Order entered herein on the 21st day of May, 1926, and the Court being satisfied that the questions determined by said Order is one of which revision may be asked, as provided by Section 24-B of the Bankrupt Law of 1898 and the Acts Amendatory thereof, and that the application for such revision should be granted, it is hereby ordered that the Order of this Court made and entered herein on the 21st day of May, 1926, be revised in matter of law, by the Circuit Court of Appeals for the Fourth Circuit, as provided by Section 24-B of the Bankrupt Act.

It is further ordered that the Clerk forthwith prepare, at the expense of the Petitioner, a certified copy of such Order, the record and proceedings in this case, upon which said Order and Judgment was rendered and file the same with the Clerk of the United States Circuit Court of Appeals for the Fourth Circuit.

Witness the Honorable D. Lawrence Groner, Judge of the United States District Court in and for the Eastern District of Virginia, and the seal of said Court at Norfolk, in said District, this 26th day of May, 1926.

D. Lawrence Groner, United States District Judge.

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[fol. 131] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed May 26, 1926

The Bankrupt herein, Harry Levy, now respectfully assigns as error in connection with his Petition for Appeal from the Judgment entered herein on the 21st day of May, 1926, and says that in the record, proceedings and final Judgment aforesaid, manifest error has been committed to his prejudice, in this, to-wit:

1

That the Honorable District Court erred in sustaining the Exceptions of the Objecting Creditors to the report and findings of the Special Master, which findings were that the Bankrupt is entitled to his Discharge.

2

That the Honorable District Court erred in refusing to sustain the Bankrupt's Exceptions to the Specifications in opposition to the discharge of the Bankrupt filed by the Objecting Creditors, in that said Specifications in opposition to the discharge set forth no act committed by the Bankrupt which by the provisions of subsection (3) Section 14 of the Bankruptcy Act, would be or are a bar to the discharge of said Bankrupt.

3

That the Honorable District Court erred in refusing to confirm the report and findings of the Special Master that the Bankrupt is entitled to Discharge because the finding of said Special Master was based upon conclusive evidence and said finding was sufficiently supported by the evidence and therefore said finding should have been confirmed.

4

That the Honorable District Court erred in refusing the Bankrupt his Discharge in that no evidence was adduced [fol. 132] to support the Specifications in Opposition to the discharge that the Bankrupt himself or some one acting at his direction made a materially false statement in writing to the Objecting Creditors, or either of them, for the purpose of the Bankrupt obtaining credit, money or property from them, or either of them.

5

That the Honorable District Court erred in denying the Bankrupt his Discharge in that no matter or thing had or done by the Bankrupt which by the provisions of said Section 14 of the Bankruptcy Act or any subsection thereof, would operate as a bar to discharge, was established by the evidence to have been done or committed by the said Bankrupt.

Wherefore the said Bankrupt, Harry Levy, prays that Order and Judgment of the District Court of the United States for the Eastern District of Virginia, entered on the 21st day of May 1926, may be reversed; that an order may be entered granting to the said Bankrupt his Discharge in Bankruptcy.

Harry Levy, by S. M. Brandt, Counsel.

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IN UNITED STATES DISTRICT COURT

STIPULATION RE TRANSCRIPT OF RECORD—Filed June 21, 1926

It is hereby stipulated between Counsel that the transcript of Record on Appeal in this cause shall consist of the following:

1. Specifications of Objections to the discharge of Harry Levy, Bankrupt, filed by the Industrial Finance Corporation of New York City, Metropolitan Trust Company of New York City and the Chatham and Phenix National Bank of New York City, Objecting Creditors.

[fol. 133] 2. The Exceptions to said Specifications filed by Harry Levy, Bankrupt.

3. Amended Specifications of Objections to the discharge of Harry Levy, Bankrupt filed by the Objecting Creditors.

4. The Answer of Harry Levy, Bankrupt, to the Amended Specifications of Objections to the discharge of Harry Levy, Bankrupt, filed by said Bankrupt.

5. Report of Honorable R. T. Thorp, Special Master, making findings of fact and law upon a reference to said Honorable R. T. Thorp by the District Court of the United States for the Eastern District of Virginia, referring said Specifications of Objections and Answer to him for finding, together with all the evidence adduced in narrative form before said Special Master and the Exhibits introduced in evidence before said Special Master.

6. Objecting Creditors Exceptions to the finding and Report of said Special Master filed in the District Court.

7. Findings of the District Court of the United States for the Eastern District of Virginia and the Order thereon entered on the 21st day of May, 1926.

8. Petition for Appeal—Assignment of Errors and Order allowing Appeal.

9. Petition to Review and Revise Order of District Court.

10. Motion to Dismiss Petition to Review and Revise Order of District Court.

11. Citation.

It is further stipulated and agreed that the Clerk of this Court shall make up a transcript of the record upon the reference to R. T. Thorp as Special Master referred to above in the above styled cause and transmit the same to the Clerk of the United States Circuit Court of Appeals [fol. 134] for the Fourth Circuit at Richmond, Virginia, to be printed in accordance with Rule 23 of that Court.

And it is further stipulated and agreed that the record which is to be certified to the United States Circuit Court of Appeals for the Fourth Circuit, shall be the record for use in any proper proceedings permitted by that Court by way of superintendence and revision of or appeal from the Order of the United States District Court for the Eastern District of Virginia, entered on the 21st day of May, 1926, and that but one record shall be printed though the proceedings herein be by Petition to Superintend, Review and Revise said Order and by Appeal from the said Order of the United States District Court for the Eastern District of Virginia.

And it is hereby further stipulated and agreed that the bond for costs to be given by the Petitioner and Appellant on this Appeal and Petition to Revise, shall be and is hereby fixed at Three Hundred ($300.00) Dollars, and notice of filing the same is waived and that the printing of said bond be dispensed with.

S. M. Brandt, Attorney for Harry Levy, Bankrupt.
R. Randolph Hicks, Satterlee & Canfield, Attorney for Industrial Finance Corporation, Metropolitan Trust Company, and Chatham & Phenix National Bank, Objecting Creditors.

June 16th, 1926.

[fols. 135 & 136] IN UNITED STATES DISTRICT COURT

MEMORANDUM OF ORIGINAL PAPERS ACCOMPANYING TRANSCRIPT

1. Petition for appeal.
2. Order allowing appeal.
3. Citation.
4. Order extending and enlarging time within which transcript of record may be filed. Filed June 21, 1926.

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Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 137] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

Review Case

No. 2528. In Bankruptcy

HARRY LEVY, Bankrupt, Petitioner,
versus

INDUSTRIAL FINANCE CORPORATION, METROPOLITAN TRUST Company, and Chatham & Phenix National Bank of New York City, Respondents

On Petition to Superintend and Revise, in Matter of Law, Proceedings of the District Court of the United States for the Eastern District of Virginia, at Norfolk

MINUTE ENTRIES

May 27, 1926, the appearance of S. M. Brandt and R. M. Lett is entered for the petitioner.

June 12, 1926, the appearance of R. Randolph Hicks is entered for the respondents.

July 31, 1926, the transcript of record is filed.

August 27, 1926, twenty-five copies of the printed record are filed.

Minute entry of argument and submission October 22, 1926, omitted in printing.

[fol. 138] In United States Circuit Court of Appeals, Fourth Circuit

No. 2528. In Bankruptcy

Harry Levy, Bankrupt, Petitioner,

versus

Industrial Finance Corporation, Metropolitan Trust Company, and Chatham & Phenix National Bank of New York City, Respondents

On Petition to Superintend and Revise, in Matter of Law, Proceedings of the District Court of the United States for the Eastern District of Virginia, at Norfolk

No. 2555. In Bankruptcy

Harry Levy, Bankrupt, Appellant,

versus

Industrial Finance Corporation, Metropolitan Trust Company, and Chatham & Phenix National Bank of New York City, Appellees

Appeal from the District Court of the United States for the Eastern District of Virginia, at Norfolk

Opinion—Filed January 11, 1927

[fol. 139] Argued October 22, 1926. Decided January 11, 1927

Before Waddill, Rose, and Parker, Circuit Judges

S. M. Brandt and R. M. Lett for Petitioner and Appellant, and R. Randolph Hicks (Satterlee & Canfield and J. J. Irwin, Jr., on brief) for Respondent and Appellees.

Opinion—Filed January 11, 1927

Parker, Circuit Judge:

This is an appeal from and a petition to superintend and revise in matter of law, an order of the District Court

denying a discharge in bankruptcy. The adjudication of bankruptcy, the order denying the discharge, and the order allowing the appeal, were entered prior to the going into effect of the act of May 27, 1926, amending the National Bankruptcy Act, and it is not questioned that the case is governed, both as to the rights of the parties and as to procedure, by the law as it existed prior to the amendment. Appeal under Section 25 (a) of the Bankruptcy Act was the proper and exclusive remedy; and the case will therefore be heard upon the appeal, and the petition to superintend and revise will be dismissed. Matter of Loving, 224 U. S. 183; Cook Inlet Coal Fields Co. v. Caldwell (C. C. A. 4th), 147 Fed. 475; In re Kuffler (C. C. A. 2nd), 127 Fed. 125; In re Mueller (C. C. A. 6th), 135 Fed. 711; Remington on Bankruptcy (3rd Ed.), Par. 3707.

The specifications of objections filed by three of bankrupt's principal creditors in opposition to this discharge alleged that he had obtained money from them on credit upon materially false statements in writing. The bankrupt filed answer denying this allegation. The issue thus raised was referred to a special master, who heard the testimony and reported same to the court, together with findings of fact to the effect that objectors had failed to show that the statements relied on were materially false [fol. 140] when made, or that bankrupt had knowledge of their falsity or acted otherwise than in good faith. He recommended that the discharge be granted. The trial judge sustained exceptions filed to this report, and denied the petition for discharge. This appeal is from that order, and the position of bankrupt may be stated as resting upon three propositions: (1) that the statements in writing relied upon by objectors were not false to the knowledge of bankrupt at the time they were made; (2) that, granting that there is evidence that the statements were false and fraudulent, it is not so conclusive as to show that the finding of the special master to the contrary was clearly wrong and that the court below should have affirmed his findings; and (3) that, irrespective of the falsity of the statement in writing and the bankrupt's knowledge thereof, the discharge should be granted for the reason that the money obtained went, not to bankrupt, but to a corporation of which he was president. For a proper un-

derstanding of these contentions, a brief statement of the facts is necessary.

In 1922, the bankrupt was president of the American Home Furnishers Corporation, a concern in which he and his sister-in-law owned more than two-thirds of the 30,000 shares of stock and of which he had general management and control. Prior to obtaining the money on the statements in question here, he and his sister-in-law had borrowed $550,000 on their real estate holdings, out of which debts of the corporation had been paid, and this gave him an added interest in keeping it afloat. On September 30, 1922, he obtained a loan of $1,500,000 for the corporation from objectors, upon a series of notes, the payment of which he guaranteed personally. To obtain this loan, he first furnished to objectors a financial statement of the company, and later transmitted to them an audit made by auditors employed by the corporation with their approval. Both the financial statement and the audit were false in that they showed the assets of the company to be greater than they actually were by a very large amount. They were based on books which had been padded by carrying the same merchandise on two inventories and by carrying as assets worthless accounts in cases where goods sold had been repossessed for failure to meet payments. In the latter class of cases both the accounts and the repossessed merchandise were carried as assets. It was shown that the [fol. 141] padding due to manipulation of inventories amounted to nearly half a million dollars, and that the padding due to the carrying of worthless accounts as assets amounted to a very large sum, making a total overvaluation of approximately a million dollars in a business whose assets exceeded its liabilities, exclusive of stock liabilities, by only about $3,000,000.

The padding of the books was discovered in the spring of 1923, when one Schreffler, the assistant treasurer, disclosed the condition of affairs at a meeting of representatives of banks which was being held with a view of refinancing the corporation. Schreffler stated that this padding of the books had existed since prior to the furnishing of the statement an audit upon which the $1,500,000 loan had been made; and evidence was introduced on the hearing sustaining this statement on his part. He also

stated that the books had been padded at the direction of the bankrupt; and one Morris, the representative of the objectors who was present at this meeting, testifies positively that, when bankrupt was called into the meeting and confronted with these charges, he admitted them to be true but pleaded that what he had done had been done, not for personal profit, but in an effort to save the company. The corporation was placed in bankruptcy some months thereafter, and the bankrupt's guaranty of its notes necessitated his being placed in bankruptcy also, his liability on these notes constituting the principal liability of his estate.

There is practically no question under the evidence that the written statements furnished as the basis for securing the loan for the corporation were materially false and that the objectors relied upon them in making the loan. We are satisfied, also, that they were false to the knowledge of the bankrupt. It is true that he denies knowledge of the padding of the books, and denies making the admission testified to by Morris; and, in fairness to him, it should be stated that he produced two witnesses who were present at the meeting and who testified that they did not remember hearing him make the admission. On the other hand, it is certain that the books were padded and that bankrupt was deeply interested in the corporation and had complete charge of its affairs. No one else, so far as the evidence [fol. 142] shows, had any interest in padding the books, and it is inconceivable that they should have been padded as they were without his knowing of it. So far as the admission is concerned, the testimony of Morris is positive and unequivocal, and that of the others, with the exception of the bankrupt, is merely negative. He did not see fit to call either the assistant treasurer Schreffler or Schumaker, another official of the corporation, both of whom were present at the time of the alleged admission, and who could have thrown much light upon his knowledge or lack of knowledge of the padding of the books. Their depositions were not taken nor was their absence accounted for. Under these circumstances, we think that the learned and careful District Judge was clearly right in holding that the statements upon which the "money was obtained on credit" were false to the knowledge of the bankrupt.

It is true that the special master saw and heard the witnesses, and that ordinarily much weight should be given to

his conclusions. Baker v. Bishop-Babcock-Becker Co. (C. C. A. 4th), 220 Fed. 657. But the statute (Section 14 (b) of the Bankruptcy Act) makes it the duty of the judge to hear and pass upon bankrupt's application, and the report and findings of the special master are merely advisory. Koch v. Sidney Blumenthal & Co. (C. C. A. 1st), 3 Fed. (2) 395; In re Hughes (C. C. A. 2nd), 262 Fed. 500; International Harvester Co. of America v. Carlson (C. C. A. 8th), 217 Fed. 736. Where in the opinion of the judge, these are clearly wrong, it is his duty to disregard them.

This brings us to the real question of the case: Is the bankrupt entitled to discharge, notwithstanding the making of the false statements in writing, because the money which was obtained by means thereof was received not by him but by the corporation? In passing upon this question it must be remembered that not only was bankrupt the one who actually obtained the money by means of the false statements, but also that credit was extended to him as well as to the corporation. The principal debt owing by his estate is that which arose out of the obtaining of this money; and, while the money did not go into his estate, it did go into the coffers of a corporation which he controlled and of which he was one of the principal stockholders.

The statute provides that discharge shall be denied if [fol. 143] the bankrupt has "obtained money or property on credit upon a materially false statement in writing, made by him to any person or his representative, for the purpose of obtaining credit from such person." It will be seen, therefore, that what the bankrupt did falls literally within the wording of the statute. He obtained "money * * * on credit upon a materially false statement in writing." The statute does not say that he must have obtained the money or property for himself, and we do not think such meaning is implied in the use of the word "obtain". It will be noted that the use of the word in this statute is very similar to its use in statutes against false pretense; and while some of the earliest decisions held that it was necessary for a conviction under the false pretense statutes to show that the accused obtained the property for himself; it is now, and has been for years, the practically universal holding that "the property need not be

obtained by accused for himself, it is sufficient if, induced by his false representations, it is delivered to another, either for the benefit of that other or for accused's benefit." 25 C. J. 606, 19 Cyc. 409; Com. v. Langley, 169 Mass. 89, 47 N. E. 511; Com. v. Harley, 7 Metc. 462; Foss v. State, 15 Ga. A. 478, 83 S. E. 880; Sandy v. State, 60 Ala. 58; Fisher v. State, 161 Ark. 586, 256 S. W. 858; People v. Woods, 59 Cal. A. 740, 212 Pac. 41; Musgrave v. State, 133 Ind. 297, 32 N. E. 885; State v. Balliet, 63 Kan. 707, 66 Pac. 1005; Speer v. State, 50 Tex. Cr. App. 273, 97 S. W. 469; State v. Mendenhall, 24 Wash. 12, 63 Pac. 1109. It is reasonable to assume that, in using the word "obtain", Congress had in mind the meaning which the courts had given it in construing other statutes against frauds. And certainly the meaning intended was that which had become settled under the modern decisions, and not that of a few early decisions no longer generally followed. If, therefore, we look merely to the language of the statute we are satisfied that to bar a discharge it is not necessary that the "money or property" shall have been obtained by the bankrupt for his own use and benefit.

The same result follows if we look to the reason and spirit of the law. As said by Judge Pritchard, speaking for this court, in W. S. Peck Co. v. Lowenbein, 178 Fed. 178, 181, "It is the evident purpose of the bankruptcy act to protect that unfortunate class of debtors who are un-[fol. 144] able to pay their debts by giving them a discharge, thus affording them an opportunity to engage in business again, while, on the other hand, it is manifestly intended to deny a discharge to those whose conduct has been such as to show that they obtained credit by false statements calculated and intended to deceive and thereby defraud their creditors." And as said by the Circuit Court of Appeals of the Second Circuit, "A discharge is granted to an honest bankrupt in order that he may reinstate himself in the business world; it is refused to a dishonest bankrupt as a punishment for his fraud and to prevent its continuance in the future." In re Hammerstein, 189 Fed. 37. Under the principles stated, we see no reason for making a distinction between cases where the bankrupt has himself received the money obtained by the false statement, and cases where it has been received by a corporation in which

he is interested. If the principal debt of his estate is one which he contracted in securing money by means of false and fraudulent statements, there would seem to be as much reason for denying him a discharge in one case as in the other. For the determining factor is manifestly not the fact that the bankrupt has received money, but that he has incurred debts through fraud.

The exact point involved here was before the District Court for the Northern District of New York in the case of In re Aldridge, 168 Fed. 93. In that case, the bankrupt had obtained property on credit for his brother by the use of false written statements, and had indorsed the notes given by his brother for the property. In denying a discharge, the court said:

"It is, of course, possible to construe subdivision 3 of section 14b of the bankruptcy act, as amended, to mean that the property must have been obtained by the bankrupt for his own use or benefit, to swell or benefit his own estate; and that the written statement used to obtain such property must have been one made by the bankrupt himself or under his direction, so that the written statement itself was in fact his composition, and his expression made to the person of whom the property is obtained and for the purpose of obtaining it. But the section does not so read, and would not, in my judgment, serve the purpose for which intended should we give it such a narrow and strict construction. * * * The words 'obtained property', [fol. 145] and 'obtaining such property on credit', do not mean that the property must have been obtained for the use or benefit of the one obtaining it. I think that if a bankrupt has obtained property from another person for a third person, on his own credit (that of the bankrupt), upon a materially false statement in writing made to that 'other person' for that purpose, he is to be denied a discharge. If A, now a bankrupt seeking a discharge, as indorser on a note given by B, as maker, in payment for property obtained from C for B by A, is owing C, and C was induced by A to part with such property to B and accept such not relying on A's indorsement, and A at the time of obtaining such property made a materially false statement in writing to C, or the agent who did the business for C, and the property was parted with and the note ac-

cepted in reliance on such statement and in the belief that it was true, A is not entitled to his discharge. The statute quoted was intended to cover such a case, and in my judgment does cover it."

Prior to that decision the point was before the District Court for the Southern District of New York, in the case of In re Dresser & Co., 144 Fed. 318, in which it appeared that the bankrupt firm, which owned two-thirds of the stock of the American Tubing & Webbing Co., a corporation, had arranged with a broker for the sale of drafts to be drawn by the corporation, and accepted by Dresser & Co. The scheme contemplated that the proceeds of the drafts should be paid by the broker to the corporation, and used by it to the extent required by its financial necessities and the balance be sent to the firm. A false written statement was furnished by the firm to aid in the sale of the drafts. In denying a discharge, Judge Holt said:

"Even if no part of the proceeds of the sale of the acceptances had been remitted by the American Tubing & Webbing Company to Dresser & Co., the bankrupt Dresser had such an interest in the American Tubing & Webbing Company, as owner of two-thirds of its stock, that he would be held, within all the authorities, to have obtained the money paid to the American Tubing & Webbing Company, even if the theory upon which the bankrupt's counsel based his arguments, that as between the American Tubing & [fol. 146] Webbing Company and the banks which bought the paper, the American Tubing & Webbing Company was the sole vendor of presumably business paper, and the brokers, Wheeler & Jones, who negotiated the sale, were the agents of the American Tubing & Webbing Company only, should be substantially admitted. The benefit which the bankrupt would be presumed to have derived from the payment of the money to the corporation, of which he was the principal stockholder, would, I think, have made it a case of his obtaining the money on the credit of the written statement, within the meaning of all the cases construing the statutes creating a criminal or civil responsibility for obtaining money by fraud."

In the case of In re Bleyer (C. C. A. 2nd), 215 Fed. 896, it appeared that bankrupt had obtained money for a corpo-

ration of which he was president by false written statements as to its financial condition, upon notes indorsed by him; and discharge was denied on that ground. It is true that it appeared in that case that at least a part of the money obtained was for the use of the bankrupt; but in the case at bar it appears that the money was obtained in an effort to save a corporation owned in large part by bankrupt and his sister-in-law, in which they were so much interested that they had already used for its benefit more than half a million dollars derived from mortgaging their other property. The efforts to save the corporation, it is true, proved unavailing, but at the time the loan was received bankrupt thought it was for his benefit; and it was in fact for his benefit in that it enabled him to keep afloat for a considerable time a corporation in which he was so vitally interested.

It is well settled that a false statement in writing by a member of a partnership, for the purpose of securing money or property on credit for the partnership, is available to prevent the discharge of the partner making the false statement, although it will not prevent the discharge of innocent partners. Peck v. Lowenbien (C. C. A. 4th), 178 Fed. 776; Ragan, Malone & Co. v. Cotton & Preston (C. C. A. 5th), 200 Fed. 546. It is true that in the case of a corporation there is the fiction of a legal entity which does not exist in the case of a partnership, but so far as the [fol. 147] merits of the question under discussion here are concerned, there can be no difference in principle between the case of a partner who obtains credit for his firm by false statements and that of the principal stockholder and manager of a corporation who by such statements obtains credit for the corporation and at the same time assumes liability for the debt thus created by indorsing the corporation's paper.

The rule applicable to all such cases is well summarized in Corpus Juris as follows:

"It is not necessary that the property should have been obtained for himself or for his benefit, but if it was obtained on his credit as principal or surety, and such credit was induced by his materially false statement in writing made for the purpose, the case is within the statute." 7 C. J. 377.

We have given careful consideration to the case of In re Applebaum (C. C. A. 2nd), 11 Fed. (2) 685, which seems to give support to the contention of bankrupt; but, while we have great respect for the court which rendered that decision, we cannot follow it. In our opinion, the doctrine there announced would in effect add to the bankruptcy act a provision not contemplated by Congress, and one not in harmony with the reason and spirit of the law. It may not be amiss to note that that was a per curiam decision by a divided court.

As stated in the beginning, we are dealing with the meaning of the Bankruptcy Act prior to its amendment by the Act of May 27, 1926. Whether, under that amendment, false statements as to the financial condition of the corporation, as distinguished from that of the bankrupt himself, would constitute grounds for denying a discharge, or whether false statements as to the financial condition of a corporation in which a large part of bankrupt's estate was invested might not amount to false statements as to his financial condition within the meaning of the act as amended, are questions which we are not called upon to consider in this case. Under the law applicable here, we are satisfied that the order denying the discharge was correct, and same is accordingly affirmed.

Case No. 2528 Dismissed.

Case No. 2555 Affirmed.

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[fol. 148] In United States Circuit Court of Appeals, Fourth Circuit

No. 2528

[Title omitted]

Judgment—Filed January 13, 1927

This Cause came on to be heard upon the petition and the motion of respondents to dismiss, and upon the transcript of the record of the proceedings of the said District

Court in the matter brought up for review, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the petition to Superintend and Revise, in this cause, be, and the same is hereby, dismissed with costs.

It is Further Ordered that the Clerk of this Court transmit a certified copy of this judgment to the said District Court.

John J. Parker, U. S. Circuit Judge.

January 13, 1927.

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[fol. 149] In United States Circuit Court of Appeals

No. 2555

[Title omitted]

Appeal Case

Minute Entries

July 31, 1926, the transcript of record is filed and the cause docketed.

Same day, the original petition for appeal, order allowing appeal, bond, and citation are certified up under Sec. 7 of Rule 14.

Same day, ord/er extending time to file the transcript of record is filed.

[fol. 150] Same day, the appeadance of S. M. Brandt and R. M. Lett is entered for the appellant.

Same day, original exhibits (documents) are certified up.

August 3, 1926, the appearance of R. Randolph Hicks is entered for the appellees.

August 27, 1926, twenty-five copies of the printed record are filed.

Minute entry of argument and submission, October 22, 1926, omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS

NOTE RE OPINION—Filed January 11, 1927

(This opinion is printed at page 138.)

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IN UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT

No. 2555

[fol. 151] [Title omitted]

Appeal from the District Court of the United States for the Eastern District of Virginia

DECREE

Filed January 13, 1927

This Cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Virginia, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court, in this cause, be, and the same is hereby affirmed with costs.

John J. Parker, U. S. Circuit Judge.

January 13, 1927.

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IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER STAYING MANDATE—Filed January 19, 1927

Upon the Application of the appellant, by S. M. Brandt, Esq., his attorney, and for good cause shown,

It is Ordered that the mandate of this Court in the above case be, and the same is hereby, stayed pending the application of the appellant in the Supreme Court of the United States for a Writ of Certiorari to this Court, provided said

application is presented in the said Supreme Court within 45 days from this date.

Edmund Waddill, Jr., Senior Circuit Judge.

January 19th, 1927.

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[fol. 152] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 153] In Supreme Court of the United States

Order Allowing Certiorari—Filed May 16, 1927

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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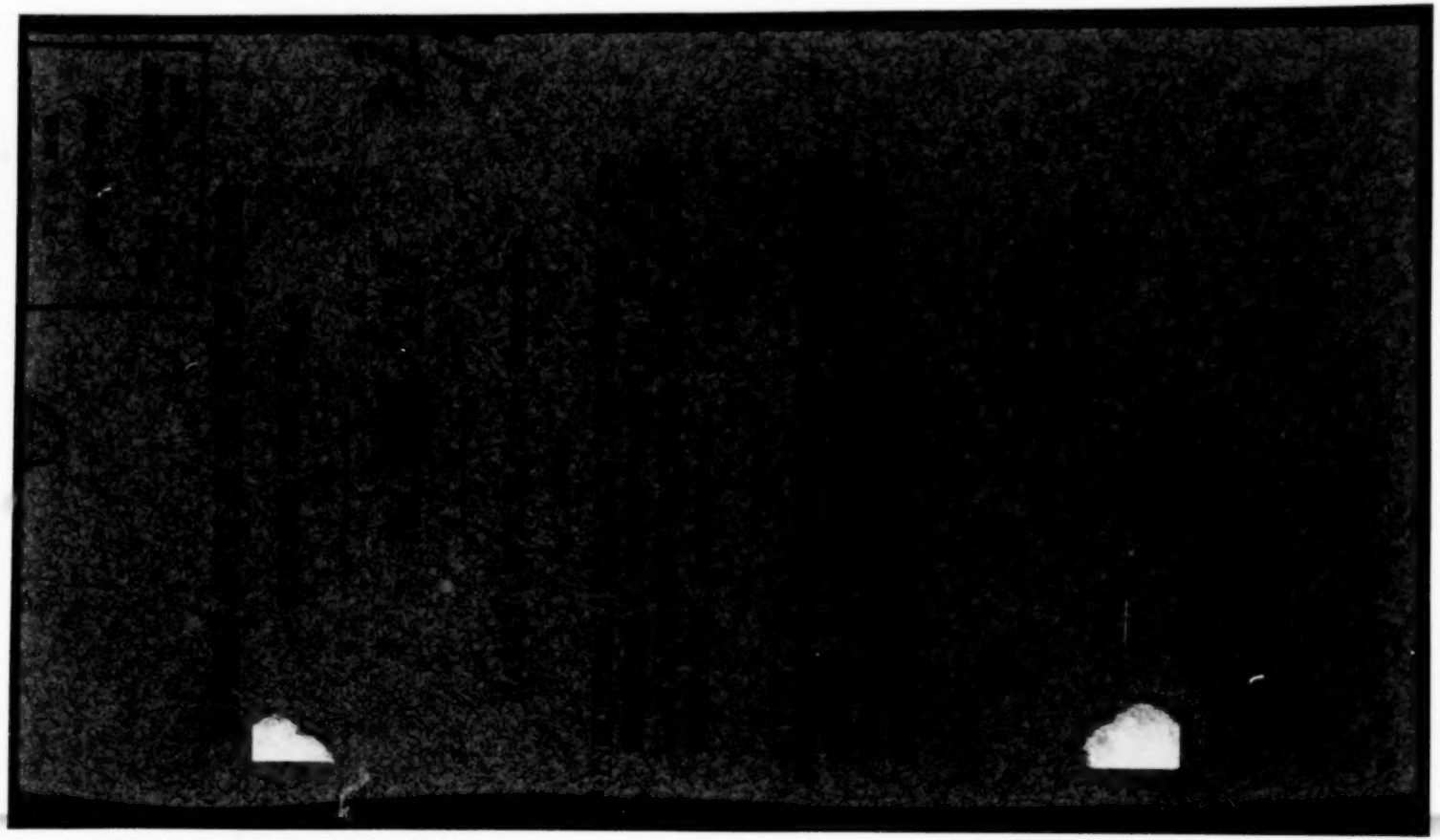
Endorsed on cover: File No. 32,596. U. S. Circuit Court of Appeals, Fourth Circuit. Term No. 217. Harry Levy, bankrupt, petitioner, vs. Industrial Finance Corporation, Metropolitan Trust Company, and Chatham & Phenix National Bank of New York City. Petition for writ of certiorari and exhibit thereto. Filed April 6th, 1927. File No. 32,596.



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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1926.**

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# No. 1029.

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HARRY LEVY, BANKRUPT, PETITIONER,

*versus*

INDUSTRIAL FINANCE CORPORATION, METROPOLITAN TRUST COMPANY, AND CHATHAM & PHENIX NATIONAL BANK OF NEW YORK CITY, RESPONDENTS.

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## PETITION FOR WRIT OF CERTIORARI.

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The petition of Harry Levy, bankrupt, respectfully represents:

### Proceedings.

On the 10th day of December, 1924, the petitioner was adjudged a bankrupt by the District Court of the United States for the Eastern District of Virginia; on the 14th day of January, 1925, the petitioner filed his petition for discharge in bankruptcy, attached to which

petition was the recommendation of the trustee of his estate in bankruptcy and the Referee in Bankruptcy recommending the granting of such discharge.

On the 30th day of March, 1925, the respondents, Chatham & Phenix National Bank of New York City, Metropolitan Trust Company of New York City and the Industrial Finance Corporation of New York City, filed specifications in opposition to the discharge of said bankrupt (Rec. p. 9), to which said specifications the bankrupt duly filed his exceptions (Rec. p. 12). Thereafter the respondents filed an amended specification of objections to the petitioner's discharge as a bankrupt (Rec. p. 13), to which said amended specification the petitioner filed his answer (Rec. p. 57).

The Honorable District Court of the United States for the Eastern District of Virginia did on the 24th day of June, 1925, by proper order, refer to the Honorable R. T. Thorp, as Special Master, the issues raised by said specification exceptions and answer thereto, for a finding to be had by said Special Master and a report to be made by said Special Master to the court (Rec. p. 58).

The Special Master on the 11th day of September, 1925, pursuant to the Decree of Reference, made his findings of fact and reported to the court as follows (Rec. pp. 68-69):

1. That the objectors have failed to show that the written statements relied on were materially false at the times they were made.

2. That they have failed to show that the money was obtained on any known false statement in writing made by Levy.

3. That the $1,500,000 was loaned by the objectors, not because of any statement made by Levy, but upon (88) the audit made by Haskins & Sells, Certified Public Accountants, designated or accepted for that purpose by the objectors themselves.

4. That even if false the objectors have failed to show that Harry Levy had knowledge of their falsity, or in the matter of obtaining the money of the objectors for the corporation, Harry Levy acted otherwise than in good faith, therefore it is recommended that he be granted his discharge.

To which findings and report of the Special Master the objecting creditors on the 25th day of September, 1925, filed exceptions (Rec. p. 125), and upon a hearing thereon the District Court sustained said exceptions and entered a final order denying to your petitioner his discharge in bankruptcy (Rec. p. 129).

To the final judgment of the District Court, your petitioner sued out an appeal from and filed his petition to review and revise in matter of law the final judgment of said District Court.

The Circuit Court of Appeals for the Fourth Circuit on the 13th day of January, 1927, pronounced its judgment (Rec. p. 151) dismissing the petition to review and revise and affirmed the judgment of the District Court on appeal.

## Facts.

The essential facts as set forth in the decision of the Circuit Court of Appeals for the Fourth Circuit are as follows:

The objecting creditors in September, 1922, made a large loan to the American Home Furnishers Corporation, a corporation whereof the bankrupt was president and a large stockholder and the endorser of the bonds evidencing said loan.

The specifications in opposition to the discharge were based upon gross misrepresentation of the value of the assets of the American Home Furnishers Corporation as evidenced by two certain paper writings, one being known as original Exhibit "A," being a statement of the assets and liabilities of said corporation prepared by Robert A. Shreffler, assistant treasurer of the corporation, and the other being known as original Exhibit "C," being a report by Messrs. Haskins and Sells, Certified Public Accountants, the latter report being predicated upon the books of the corporation, which were padded to the extent of a large sum of money and in the respect that accounts of no value were treated as live assets.

The trial court reversed the findings of the Special Master and found that the bankrupt, as an officer of the corporation, caused these statements to be delivered to the objecting creditors knowing them to be false in fact, and relying thereon the objecting creditors loaned to the corporation a large sum of money which was received by and used solely for the corpora-

tion's purposes. The trial court held that the bankrupt being the largest stockholder in the corporation and the endorser of the corporation's bonds, though he neither obtained nor received the money, nor was any part thereof used for his personal benefit, that he had obtained money or property on credit upon a materially false statement in writing which barred his INDIVIDUAL DISCHARGE, which ruling was affirmed by the Circuit Court of Appeals for the Fourth Circuit.

**Legal Propositions Involved.**

The specifications in opposition to the bankrupt's discharge are based upon subsection 3 of Section 14 of the Bankrupt Act of 1898, as amended by the Act of 1910, which is as follows:

> "Obtained money or property on credit upon a materially false statement in writing, made by him to any person or representative for the purpose of obtaining credit from such person."

The sole legal proposition here involved is clearly stated in the opinion in this case of the Circuit Court of Appeals for the Fourth Circuit, as follows (Rec. p. 142):

> "THIS BRINGS US TO THE REAL QUESTION OF THE CASE: IS THE BANKRUPT ENTITLED TO DISCHARGE, NOTWITHSTANDING THE MAKING OF THE FALSE STATEMENTS IN WRITING, BECAUSE THE MONEY WHICH WAS OBTAINED BY MEANS THEREOF WAS RECEIVED NOT BY HIM BUT BY THE CORPORATION?"

At page 147 of the record, the court says:

> "It is not necessary that the property should have been obtained for himself or for his benefit, but if it was obtained on his credit as principal or surety, and such credit was induced by his materially false statement in writing made for the purpose, the case is within the statute." 7 C. J. 377.

The question presented in this case was decided by the Circuit Court of Appeals for the Second Circuit in *In re* Applebaum, 11 Fed. 2d Ed. 685-686. The facts in that case are found at page 686 and are as follows:

> "The false financial statement was issued to obtain money for the corporation upon notes made by it, endorsed by him, and taken by the creditor. It was signed by the bankrupt, but the money went to the corporation, and there was no evidence that he obtained any part of it for himself, or intended to do so at the time when he issued it, except in so far as he might later withdraw it from the business."

Based upon these facts the Circuit Court of Appeals for the Second Circuit held that the bankrupt was entitled to his discharge in bankruptcy, and said:

> "The appellant relies on *In re* Bleyer, 215 F. 896, 132 C. C. A. 236 (C. C. A. 2) but that came up on exceptions to the specifications which expressly alleged that the bankrupt had obtained some part of the money lent to his corporation. That alone saved the specifications. The same is true of *In re* Dresser, 146 F. 383, 76 C. C. A. 655 (C. C. A. 2).

"If it is necessary under Section 14*b* (3), (Comp. St. 9598), to show that the bankrupt got any of the property, the evidence is not sufficient. The corporation got it, and so far as appears he never withdrew any part of it, and, although he owned all the stock, there is no evidence that he ignored the corporate entity or treated the corporate till as his own. So the case presents the question whether the word 'obtains,' in Section 14, means that the bankrupt gets the money or property himself, or whether it is enough that he is the means of getting it for a third person. To put a bare instance: Suppose the bankrupt wishes to accommodate another person and indorses his note, making a false statement as to the maker's financial ability, to secure its acceptance. The holder would be the bankrupt's creditor, but by hypothesis the money would go to the maker. A majority of the court believes that the statement would not bar the bankrupt's discharge, because he had not obtained the money.

"The English statute against false pretenses, in its original form, was interpreted as requiring the accused to get the property. Rex *v.* Garrett, 6 Cox C. C. 260; Jones *v.* U. S., Fed. Cas. No. 7499; Willis *v.* People, 19 Hun. 84; People *ex rel.* Phelps *v.* General Sessions, 13 Hun. 396, 400; Bracey *v.* State, 64 Miss. 26, 8 So. 165. It was changed (24 and 25 Vict. c. 96, §89), and today either by statute or by decision the law is generally the other (Commonwealth *v.* Harley, 7 Mete. (Mass.) 462; Commonwealth *v.* Langley, 189 Mass. 89, 47 N. E. 511; Fisher *v.* State, 161 Ark. 586, 256 S. W. 858; People *v.* Woods, 59 Cal. App. 740, 212 P. 41; People *v.* Aronson, 173

App. Div. 734, 156 N. Y. S. 396, affirmed 218 N. Y. 684, 113 N. E. 1062).

"*In re* Dunfee, 219 N. Y. 188, 144 N. E. 52, construing Section 17 (2), (Comp. St. 9601), does not touch the question. Some of the cases are to be distinguished, because the accused was indicted as accessory, State *v.* Davis, 56 Kan. 54, 42 P. 348; Sandy *v.* State, 60 Ala. 58; People *v.* Moran, 43 App. Div. 155, 59 N. Y. S. 312, affirmed 161 N. Y. 857, 57 N. E. 1120; Griggs *v.* U. S. 158 F. 572, 85 C. C. A. 596 (C. C. A. 9). It may be that Section 14*b* (3) was drawn following the statute of false pretenses, but the majority thinks that, if so, the original interpretation was the right one, and that in any case, when Congress chose the same words, it must be supposed to have accepted the original interpretation along with them."

This Honorable Court on the 18th day of October, 1926, denied a petition for writ of certiorari to review the judgment of the Circuit Court of Appeals for the Second Circuit. State Bank *v.* Philip Applebaum, No. 508, U. S. Sup. Ct. Adv. Op. Nov. 15, 1926, 71 L. Ed. 129.

**Grounds for Certiorari.**

Your petitioner most respectfully represents that the United States Circuit Court of Appeals for the Fourth Circuit having declined to follow the decision of the Circuit Court of Appeals for the Second Circuit in *In re* Applebaum, 11 Fed. 2d Ed. 685, as set forth in its opinion at page 147 of the accompanying certified transcript of Record, as follows:

> "We have given careful consideration to the case of *In re* Applebaum (C. C. A. 2nd), 11 Fed. (2) 685, which seems to give support to the contention of bankrupt; but, while we have great respect for the court which rendered that decision, we cannot follow it. In our opinion, the doctrine there announced would in effect add to the bankruptcy act a provision not contemplated by Congress, and one not in harmony with the reason and spirit of the law. It may not be amiss to note that that was a *per curiam* decision by a divided court."

1. And having so construed subsection 3 of Section 14*b* of the Bankrupt Act as to give such meaning and effect thereto as is in direct conflict with the construction given said subsection 3 of Section 14*b* by the Circuit Court of Appeals for the Second Circuit, there is created an irreconcilable conflict of decision by said circuits.

2. The legal propositions involved in this petition are of great importance to the general public and the parties in that it is proper that subsection 3 of Section 14*b* of the National Bankruptcy Act should be construed by this Court in order that there may be uniformity of construction of said National Bankruptcy Act.

Your petitioner respectfully presents herewith as a part of his petition a certified transcript of the record in the said Circuit Court of Appeals for the Fourth Circuit, and further presents herewith a brief in support of his petition which deals more fully with the questions involved herein.

Your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Fourth Circuit, commanding said court to certify and send to this Court, on a day certain to be therein designated a full and complete transcript of the record and all proceedings of said Circuit Court of Appeals in this case, to the end that said case may be reviewed and determined by this Court as provided by law, and that your petitioner may have such and further relief or remedy in the premises as to this Court may seem appropriate, and that the said judgment of the said Circuit Court of Appeals may be reversed by this Honorable Court.

HARRY LEVY,
By S. M. BRANDT,
*His Attorney.*

UNITED STATES OF AMERICA,
*State of Virginia,*
*City of Norfolk, to wit:*

S. M. Brandt, being duly sworn, says that he is counsel for Harry Levy, the petitioner; that he prepared the foregoing petition and that the allegations thereof are true as he verily believes.

S. M. BRANDT.

Subscribed and sworn to before me this 31st day of March, 1927.

[SEAL.] SELMA MORRIS,
*Notary Public.*

My commission expires August 3, 1929.

**Certificate of Counsel.**

I, S. M. Brandt, of the city of Norfolk, State of Virginia, an attorney regularly admitted to the practice in the Supreme Court of the United States of America and the attorney for the petitioner herein, do hereby certify that in my opinion the foregoing petition is well founded in matter of law; that in my opinion the case is one in which the prayer of the petitioner should be granted by this Court.

Dated Norfolk, Virginia, March 31st, 1927.

S. M. BRANDT.

IN THE

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1926.**

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## No. 1029.

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HARRY LEVY, PETITIONER,

*vs.*

INDUSTRIAL FINANCE CORPORATION, METROPOLITAN TRUST COMPANY, AND CHATHAM & PHENIX NATIONAL BANK OF NEW YORK, RESPONDENTS.

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## BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

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### Statement.

One ground of error on the part of the Circuit Court of Appeals for the Fourth Circuit is respectfully submitted for the allowance of a writ of certiorari.

The said Circuit Court of Appeals for the Fourth Circuit so construed sub-section 3 of Section 14*b* of the Bankruptcy Act in this case as to create irreconcilable conflict with the construction thereof by the Circuit Court of Appeals for the Second Circuit in *In re* Applebaum, 11 Fed. 2nd Ed. 685-686.

The Circuit Court of Appeals for the Fourth Circuit held upon a like state of facts in this case as existed *In re* Applebaum, 11 Fed. 2nd Ed. 685-686, that the bankrupt is, as an individual, upon his petition for discharge from his individual liabilities, deprived of discharge under sub-section 3 of Section 14*b* of the Bankruptcy Act, if, while acting as an officer of a corporation, he obtains for the corporation money or credit upon a false written statement of the corporation's financial condition, though he obtained or received no part of such money or was any credit extended to him individually.

The ground for such ruling is that the bankrupt as a stockholder in the corporation and endorser of its paper of necessity profited thereby.

The Circuit Court of Appeals for the Second Circuit *In re* Applebaum, *supra,* decided that the bankrupt, though his relation to the corporation was the same as that of your petitioner, having obtained no part of the money or credit, was not deprived of his individual discharge.

This Honorable Court in State Bank *vs.* Philip Applebaum, No. 508, refused a writ of certiorari on October 18, 1926, to the judgment of the Circuit Court of Appeals for the Second Circuit. 71 L. Ed. 129.

## Facts.

The facts being uncontroverted in so far as applicable to the question here presented, have been concretely stated by the Circuit Court of Appeals for the Fourth Circuit in its opinion, at page 142 of the accompanying certified transcript of record:

> "This brings us to the real question of the case: Is the bankrupt entitled to discharge, notwithstanding the making of the false statements in writing, because the money which was obtained by means thereof was received not by him but by the corporation? In passing upon this question it must be remembered that not only was bankrupt the one who actually obtained the money by means of the false statements, but also that credit was extended to him as well as to the corporation. The principal debt owing by his estate is that which arose out of the obtaining of this money; *and, while the money did not go into his estate, it did go into the coffers of a corporation which he controlled and of which he was one of the principal stockholders.*"

## Legal Propositions Involved.

## Grounds for Certiorari.

Uniform construction of the National Bankruptcy Act, especially so important a provision thereof as sub-section 3 of Section 14*b*, is essential to the proper administration thereof.

It is most deferentially submitted:

The Circuit Court of Appeals for the Fourth Circuit has in this case construed sub-section 3 of Section

14*b* so that the president or other officer of a corporation is denied his individual discharge if he is a party to the corporation obtaining money or credit upon a false written financial statement made by the corporation. The Circuit Court of Appeals for the Second Circuit has *In re* Applebaum, *supra*, given a contrary construction to sub-section 3 of Section 14*b*.

This Honorable Court has denied a review by certiorari of the ruling by the Second Circuit. State Bank *vs.* Philip Applebaum, No. 508, U. S. Sup. Ct. Adv. Op. Nov. 15, 1926, 71 L. Ed. 129.

This Honorable Court, however, expressed no opinion upon the denial of said writ of certiorari (*supra*).

In the case of *In re* Applebaum the Circuit Court of Appeals for the Second Circuit, at page 686, said:

> "The appellant relies on *In re* Bleyer, 215 F. 896, 132 C. C. A. 236 (C. C. A. 2), but that came up on exceptions to the specifications which expressly alleged that the bankrupt had obtained some part of the money lent to his corporation. That alone saved the specifications. The same is true of *In re* Dresser, 146 Fed. 383, 76 C. C. A. 655 (C. C. A. 2).
>
> "(6) If it is necessary under Section 14*b* (3), (Comp. St. No. 9598), to show that the bankrupt got any of the property, the evidence is not sufficient. The corporation got it, and so far as appears he never withdrew any part of it, and, although he owned all the stock, there is no evidence that he ignored the corporate entity or treated the corporate till as his own. So the case presents the question whether the word 'obtains,' in Section 14, means that the bank-

> rupt gets the money or property himself, or whether it is enough that he is the means of getting it for a third person. To put a bare instance: Suppose the bankrupt wishes to accommodate another person and indorses his note, making a false statement as to the marker's financial ability, to secure its acceptance. The holder would be the bankrupt's creditor, but by hypothesis the money would go to the maker. A majority of the court believes that the statement would not bar the bankrupt's discharge, because he had not obtained the money. The burden of proof is on the opposing creditor."

The Circuit Court of Appeals for the Fourth Circuit supports its ruling by the rulings in the cases of *In re* Hammerstein, 189 Fed. 37, and *In re* Aldridge, 168 Fed. 93, and quotes at length from the case of *In re* Dresser, 144 Fed. 318, decisions of the district courts of New York in the Second Circuit, cited and explained by the Circuit Court of Appeals for the Second Circuit in *In re* Applebaum, *supra.*

The Circuit Court of Appeals for the Fourth Circuit therefore grounded its decision in this case upon decisions of district courts of the second circuit, though overruled by the Appellate Court of said circuit in its construction of subsection 3 of Section 14*b*, which the Circuit Court of Appeals for the Fourth Circuit declined to follow. In its opinion at page 147 of the accompanying certified transcript of record it says:

> "We have given careful consideration to the case of *In re* Applebaum (C. C. A. 2nd), 11 Fed. (2) 685, which seems to give support to the contention of bankrupt; but while we have great

> respect for the court which rendered that decision, we cannot follow it. In our opinion, the doctrine there announced would in effect add to the bankruptcy act a provision not contemplated by Congress, and one not in harmony with the reason and spirit of the law. It may not be amiss to note that that was a *per curiam* decision by a divided court."

It is therefore most respectfully submitted that, in this state of conflict of decision between the Circuit Court of Appeals for the Fourth Circuit and the Circuit Court of Appeals for the Second Circuit, it is proper that a writ of certiorari should be awarded to the judgment of the said Circuit Court of Appeals for the Fourth Circuit.

**Conclusion.**

Your petitioner respectfully submits, for the reasons assigned and because of such conflict of decision of the Circuit Court of Appeals for the Fourth Circuit and the Circuit Court of Appeals for the Second Circuit, and because an important question of Federal law has been decided by said Circuit Courts of Appeals which has not been decided but should be settled by this Honorable Court, a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Fourth Circuit should be granted.

Respectfully submitted,

S. M. BRANDT,
*Attorney for Petitioner.*

(5461)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

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# No. 217.

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HARRY LEVY, BANKRUPT, PETITIONER,

*vs.*

INDUSTRIAL FINANCE CORPORATION, METROPOLITAN TRUST COMPANY, AND CHATHAM & PHENIX NATIONAL BANK OF NEW YORK.

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## BRIEF FOR PETITIONER.

---

The judgment of the Circuit Court of Appeals for the Fourth Circuit, to which this writ has been granted, is styled Harry Levy *versus* Industrial Finance Corporation, 16 Fed. (2nd), 769.

### Grounds of Jurisdiction.

1. The Circuit Court of Appeals for the Fourth Circuit, by its opinion filed January 11, 1927 (R., 129-138), and judgment of January 13, 1927 (R., 140), so con-

strued subsection 3 of Section 14-B of the Bankrupt Act as to give such meaning and effect thereto as is in direct conflict with the construction given said subsection 3 of Section 14-B by the Circuit Court of Appeals for the Second Circuit.

2. The legal proposition involved is of great importance to the general public and the parties in that it is proper that sub-section 3 of Section 14-B of the National Bankruptcy Act should be construed by this Honorable Court in order that there may be uniformity of construction thereof.

3. An important question of Federal law has been decided by said respective circuit courts of appeal which should be finally settled by this Honorable Court.

A review and reversal of the judgment of the Circuit Court of Appeals for the Fourth Circuit is sought pursuant to Section 240 of the Judicial Code as amended by the Act of February 13, 1925, C. 229, Secs. 1, 13; 43 Stat. 936, 941; Title 11, Sec. 48, U. S. C. A. See Forsyth *vs.* Hammond 166 U. S., 506, 514; Am. Const. R. Co. *vs.* Jacksonville, etc., Ry. Co., 148 U. S., 384.

**Statement.**

On the 10th day of December, 1924, the petitioner was adjudged a bankrupt by the District Court of the United States for the Eastern District of Virginia; on the 14th day of January, 1925, the petitioner filed his petition for discharge in bankruptcy, attached to which petition was the recommendation of the trustee

of his estate in bankruptcy and the referee in bankruptcy recommending the granting of such discharge.

On the 30th day of March, 1925, the respondents, Chatham and Phenix National Bank of New York City, Metropolitan Trust Company of New York City and the Industrial Finance Corporation of New York City, filed specifications in opposition to the discharge of said bankrupt (R., 7), to which said specifications the bankrupt duly filed his exceptions (R., 9). Thereafter the respondents filed an amended specification of objections to the petitioner's discharge as a bankrupt (R., 9), to which said amended specification the petitioner filed his exceptions and answer (R., 40).

The essential facts as set forth in the decision of the Circuit Court of Appeals for the Fourth Circuit are as follows:

The objecting creditors, in September, 1922, made a large loan to the Amercian Home Furnishers Corporation, a corporation whereof the bankrupt was president and a large stockholder and the endorser of the bonds evidencing said loan.

The specifications in opposition to the discharge were based upon gross misrepresentation of the value of the assets of the American Home Furnishers Corporation, as evidenced by two certain paper writings, one being known as original Exhibit "A," being a statement of the assets and liabilities of said corporation prepared and signed by Robert A. Shreffler, Assistant Treasurer of the corporation, and delivered by Harry Levy, the bankrupt, to the objecting creditors or their representatives, and the other being known as

original Exhibit "C," being a report by Messrs. Haskins and Sells, Certified Public Accountants, the latter report being predicated upon the books of the corporation, which were padded to the extent of a large sum of money and in the respect that accounts of no value were treated as live assets.

The Honorable District Court of the United States for the Eastern District of Virginia did on the 24th day of June, 1925, by proper order, refer to the Honorable R. T. Thorp, as Special Master, the issues raised by said specification, exceptions and answer thereto, for finding and report to the court (R., 50).

The Special Master on the 11th day of September, 1925, pursuant to the decree of reference, made his findings of fact and reported to the court as follows (R., 53-60):

1. That the objectors have failed to show that the written statements relied on were materially false at the times they were made.

2. That they have failed to show that the money was obtained on any known false statement in writing made by Levy.

3. That the $1,500,000 was loaned by the objectors, not because of any statement made by Levy, but upon the audit made by Haskins and Sells, Certified Public Accountants, designated or accepted for that purpose by the objectors themselves.

4. That even if false, the objectors have failed to show that Harry Levy had knowledge of their falsity

or, in the matter of obtaining the money of the objectors for the corporation, Harry Levy acted otherwise than in good faith; therefore it is recommended that he be granted his discharge.

To which findings and report the objecting creditors, on the 25th day of September, 1925, filed exceptions (R., 119), and upon a hearing thereon the district court sustained said exceptions and entered a final order denying to your petitioner his discharge in bankruptcy (R., 121-123), finding that the bankrupt, as an officer of the corporation, caused the financial statements to be delivered to the objecting creditors knowing them to be false in fact, and relying thereon the objecting creditors loaned to the corporation a large sum of money, which was received by and used solely for the corporation's purposes. The district court held that the bankrupt, being the largest stockholder in the corporation and the endorser of the corporation's bonds, though he neither obtained nor received the money, nor was any part thereof used for his personal benefit, that he had obtained money or property on credit upon a materially false statement in writing, which barred his INDIVIDUAL DISCHARGE (R., 121-122).

To the final judgment of the district court, your petitioner sued out an appeal from and filed his petition to review and revise in matter of law the final judgment of said district court.

The Circuit Court of Appeals for the Fourth Circuit on the 13th day of January, 1927, pronounced its judgment (R., 140) dismissing the petition to review

and revise and affirmed the judgment of the district court on appeal.

**Error Assigned Intended to be Urged.**

The Circuit Court of Appeals for the Fourth Circuit erred in its construction of subsection 3 of Section 14-B of the National Bankruptcy Act as amended by the Act of 1910. The specifications in opposition to the bankrupt's discharge are based upon said section of the Bankruptcy Act, so much of which as is pertinent is as follows:

> "Obtained money or property on credit upon a materially false statement in writing, made by him to any person or representative for the purpose of obtaining credit from such person."

The said Circuit Court of Appeals for the Fourth Circuit so construed subsection 3 of Section 14-B of the Bankruptcy Act in this case as to create irreconcilable conflict with the construction thereof by the Circuit Court of Appeals for the Second Circuit in *In re* Applebaum, 11 Fed., 2d Ed., 685-686.

The Circuit Court of Appeals for the Fourth Circuit held upon a like state of facts in this case as existed in *In re* Applebaum, 11 Fed., 2d Ed., 685-686, that the bankrupt is, as an individual, upon his petition for discharge from his individual liabilities, deprived of discharge under subsection 3 of Section 14-B of the Bankruptcy Act, if, while acting as an officer of a corporation, he obtains for the corporation money or credit upon a materially false written statement of the corpo-

ration's financial condition, though he obtained or received no part of such money or was any credit extended to him individually.

The ground for such ruling is that the bankrupt as a stockholder in the corporation and endorser of its paper of necessity profited thereby.

The Circuit Court of Appeals for the Second Circuit in *In re* Applebaum, *supra,* decided that the bankrupt, though his relation to the corporation was the same as that of your petitioner, having obtained no part of the money or credit, was not deprived of his individual discharge.

**Legal Proposition Involved.**

The sole legal proposition here involved is clearly stated in the opinion of the Circuit Court of Appeals for the Fourth Circuit, as follows (R., 133):

> "This brings us to the real question of the case: Is the bankrupt entitled to discharge, notwithstanding the making of the false statements in writing, because the money which was obtained by means thereof was received not by him but by the corporation?"

The question presented in this case was decided by the Circuit Court of Appeals for the Second Circuit in *In re* Applebaum, 11 Fed., 2d Ed., 685-686. The facts in that case are found at page 686 and are as follows:

> "The false financial statement was issued to obtain money for the corporation upon notes made by it, endorsed by him, and taken by the

creditor. It was signed by the bankrupt, but the money went to the corporation, and there was no evidence that he obtained any part of it for himself, or intended to do so at the time when he issued it, except in so far as he might later withdraw it from the business."

Based upon these facts the Circuit Court of Appeals for the Second Circuit held that the bankrupt was entitled to his discharge in bankruptcy, and said:

"The appellant relies on *In re* Bleyer, 215 F. 896, 132 C. C. A. 236 (C. C. A. 2) but that came up on exceptions to the specifications which expressly alleged that the bankrupt had obtained some part of the money lent to his corporation. That alone saved the specifications. The same is true of *In re* Dresser, 146 F. 383, 76 C. C. A. 655 (C. C. A. 2).

"If it is necessary under Section 14-B (3), (Comp. St. 9598), to show that the bankrupt got any of the property, the evidence is not sufficient. The corporation got it, and so far as appears he never withdrew any part of it, and, although he owned all the stock, there is no evidence that he ignored the corporate entity or treated the corporate till as his own. So the case presents the question whether the word 'obtains,' in Section 14, means that the bankrupt gets the money or property himself, or whether it is enough that he is the means of getting it for a third person. To put a bare instance: Suppose the bankrupt wishes to accommodate another person and indorses his note, making a false statement as to the maker's financial ability, to secure its acceptance. The holder would be the bankrupt's cred-

itor, but by hypothesis the money would go to the maker. A majority of the court believes that the statement would not bar the bankrupt's discharge, because he had not obtained the money.

"The English statute against false pretenses, in its original form, was interpreted as requiring the accused to get the property. Rex *v.* Garrett, 6 Cox C. C. 260; Jones *v.* U. S., Fed. Cas. No. 7499; Willis *v.* People, 19 Hun. 84; People *ex rel.* Phelps *v.* General Sessions, 13 Hun. 396, 400; Bracey *v.* State, 64 Miss. 26, 8 So. 165. It was changed (24 and 25 Vict. c. 96, Sec. 89), and today either by statute or by decision the law is generally the other (Commonwealth *v.* Harley, 7 Mete. (Mass.) 462; Commonwealth *v.* Langley, 189 Mass. 89, 47 N. E. 511; Fisher *v.* State, 161 Ark. 586, 256 S. W. 858; People *v.* Woods, 59 Cal. App. 740, 212 P. 41; People *v.* Aronson, 173 App. Div. 734, 156 N. Y. S. 396, affirmed 218 N. Y. 684, 113 N. E. 1062).

"*In re* Dunfee, 219 N. Y. 188, 144 N. E. 52, construing Section 17 (2), (Comp. St. 9601), does not touch the question. Some of the cases are to be distinguished, because the accused was indicted as accessory, State *v.* Davis, 56 Kan. 54, 42 p. 348; Sandy *v.* State, 60 Ala. 58; People *v.* Moran, 43 App. Div. 155, 59 N. Y. S. 312, affirmed 161 N. Y. 857, 57 N. E. 1120; Griggs *v.* U. S., 158 F. 572, 85 C. C. A. 496 (C. C. A. 9). It may be that Section 14-B (3) was drawn following the statute of false pretenses, but the majority thinks that, if so, the original interpretation was the right one, and that in any case, when Congress chose the same words, it must be supposed to have accepted the original interpretation along with them."

This Honorable Court on the 18th day of October, 1926, denied a petition for writ of certiorari to review the judgment of the Circuit Court of Appeals for the Second Circuit. State Bank *vs.* Philip Applebaum, No. 508, U. S. Sup. Ct. Adv. Op., November 15, 1926, 71 L. Ed., 129.

The United States Circuit Court of Appeals for the Fourth Circuit declined to follow the decision of the Circuit Court of Appeals for the Second Circuit in *In re* Applebaum, 11 Fed., 2d Ed., 685, as set forth in its opinion at page 128 of the record, as follows:

> "We have given careful consideration to the case of *In re* Applebaum (C. C. A. 2nd), 11 Fed. (2) 685, which seems to give support to the contention of bankrupt; but, while we have great respect for the court which rendered that decision, we cannot follow it. In our opinion, the doctrine there announced would in effect add to the bankruptcy act a provision not contemplated by Congress, and one not in harmony with the reason and spirit of the law. It may not be amiss to note that that was a *per curiam* decision by a divided court,"

but based its ruling upon the decisions of the District Courts of the Second Circuit in the cases of *In re* Hammerstein, 189 Fed., 37, and *In re* Aldridge, 168 Fed., 93, and quotes at length from the case of *In re* Dresser, 144 Fed., 318, overruled or explained in *In re* Applebaum, *supra* (Circuit Court of Appeals for the Second Circuit).

## ARGUMENT.

The adjudication of bankruptcy, the order denying the discharge, and the order allowing the appeal, were entered prior to the going into effect of the Act of May 27, 1926, amending the National Bankruptcy Act, and it is not questioned that the case is governed, both as to the rights of the parties and as to procedure, by the law as it existed prior to the amendment.

Section 14-B, subsection 3, of the Bankrupt Act as amended by the Act of June 25, 1910, C. 412, Sec. 6, 36 Stat. 839, provides that—

> "The judge shall hear the application for a discharge and such proofs and pleas as may be made in opposition thereto, etc., * * * and discharge the applicant unless HE HAS * * * obtained money or property on credit upon a materially false statement in writing, made by him to any person or his representative for the purpose of obtaining credit from such person."

The amended specifications in opposition to discharge are as follows:

> "The above named bankrupt has obtained money on credit upon materially false statements in writing, made by him to the objecting creditors above named, for the purpose of obtaining credit from the said creditors, in that on or about the 30th day of September, 1922, the said bankrupt, AS THE PRESIDENT OF THE AMERICAN HOME FURNISHERS CORPORATION OF NORFOLK, VIRGINIA, did knowingly and fraudulently furnish materially false statements in

writing to the above-mentioned creditors of the FINANCIAL CONDITION OF THE SAID AMERICAN HOME FURNISHERS CORPORATION, which represented the financial status of the American Home Furnishers Corporation to be good and substantial, whereas in truth and fact said statements were materially false and were made by the said bankrupt FOR THE PURPOSE OF OBTAINING FROM THE ABOVE-MENTIONED CREDITORS, MONEY AND ON CREDIT FOR THE SAID CORPORATION, which would in turn be a benefit to him as the principal stockholder of said corporation, and which materially false statements were relied upon by the said above-mentioned creditors, AND THE MONEY THEREAFTER WAS OBTAINED ON CREDIT BY THE SAID BANKRUPT, AS PRESIDENT OF THE SAID AMERICAN HOME FURNISHERS CORPORATION from the said above-mentioned creditors, upon a series of notes aggregating $1,500,000.00, each of which notes was guaranteed by said bankrupt, as will appear from an indenture protecting said notes and describing same, a copy of which is attached hereto as Exhibit 'A'." (Capitals ours.)

To said amended specifications the bankrupt duly filed his exceptions (R., 49).

The provisions of law relating to discharge of a bankrupt are to be construed favorably to the bankrupt.

*In re* Jacobs, 241 Fed., 620.
*In re* Rosenfeldt, 262 Fed., 876.
*In re* Reisler, 278 Fed., 618.
*In re* Braus, 248 Fed., 55.

A discharge can be refused only on one or more of the specific grounds mentioned in the statute, not on account of any acts or conduct on the part of the bankrupt, however reprehensible, which do not come clearly within the words of the law.

Robinson *vs.* Williston & Co., 266 Fed., 970.
W. A. Liller Building Co. *vs.* Reynolds, 247 Fed., 90.

The provisions of Section 13-B, subsection 3, cannot be extended by construction, but must be given a strict construction in favor of the bankrupt.

*In re* Rosenfeldt, 262 Fed., 876.
*In re* Oliner, 256 Fed., 734.

It is most respectfully submitted that in order to defeat the discharge of the bankrupt herein, the objecting creditors must bring his act or acts within the letter of the statute.

The language of the statute is:

> "The judge shall * * * discharge the applicant unless *he* (meaning the bankrupt) *has* (1) obtained money or property on credit, (2) upon a materially false statement in writing (3) made to the creditor or its representative or agent for the express purpose of obtaining such money or credit."

The specifications in opposition to discharge aver that the money obtained or the credit given was upon a materially false statement made by the *president of the corporation* for the express purpose of obtaining

such money or credit *for the corporation,* and allege further that he, the bankrupt herein, was the guarantor of each and every one of the notes *given by the corporation* upon which the money was obtained (R., 10-11).

By no construction of the language of the amended specifications could it be said that the amended specifications contain any charge that *the bankrupt as an individual* obtained money or property on credit upon a materially false statement in writing made to the creditor for such purpose. So much of the charge in the amended specifications (R., 10) as charges that he (the bankrupt herein) was the guarantor upon a series of notes upon which money was obtained from the objecting creditors is necessarily a statement that he, the bankrupt, loaned his credit and financial strength to the corporation rather than a suggestion that he individually obtained money or property or personally benefited thereby.

The statute penalizes by the denial of a discharge to the bankrupt the commission of the act of obtaining money or property on credit as provided by subsection 3 of Section 14-B therefore, the only reasonable construction thereof is such that leads irresistibly to the conclusion that the word "obtained" is used in the limited and restricted sense that it applies only to the act of the person who seeks the discharge. If the word "obtained" is to be so interpreted as to include acts of the bankrupt not committed in connection with his individual bankruptcy, then there would be read into the statute by construction every act in which he may have ever been concerned as an agent, officer, or

indeed employe, of any corporation as ground for the denial of a discharge.

In Robinson *vs.* J. R. Williston & Co., Circuit Court of Appeals, First Circuit, 266 Fed., 971, referring to the construction placed upon Section 14-B, subsection 3, Amendment of 1910, dealing with the legislative history of this section, at page 971, the court says:

> "In its report, the Senate Judiciary Committee stated that it considered the House amendment too harsh and 'that any tendency to make the bankruptcy act unduly harsh is to be avoided.'"

If the word "obtained" as employed in Section 14-B, subsection 3, is used in its commonly accepted sense, it is defined:

> "To bring into one's own possession, procure especially by effort, whether for temporary or permanent purposes; acquire."
>
> Funk & Wagnalls New Standard Dictionary of the English Language.

It is most respectfully submitted that any other construction would be to defeat the legislative intent, and that the Circuit Court of Appeals for the Second Circuit, having in mind the application of the statute to various situations in which it was sought to give it such strained construction by the district courts in said circuit as to deny relief to an individual on account of his acts as a corporate officer, has construed Section 14-B, subsection 3, and made clear its true intent and meaning in *In re* Applebaum, 11 Fed. (2d), 685, in which the Court says at page 687:

"It may be that Section 14-B (3) was drawn following the statute of false pretenses, but the majority think that, if so, the original interpretation was the right one, and that in any case, when Congress chose the same words, it must be supposed to have accepted the original interpretation along with them."

**Conclusion.**

It is most respectfully submitted for the reasons assigned that the judgment of the Circuit Court of Appeals for the Fourth Circuit should be reversed and judgment entered granting to your petitioner his discharge in bankruptcy.

Respectfully submitted,

S. M. BRANDT,
*Attorney for Petitioner.*

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# Supreme Court of the United States

OCTOBER TERM, 1927.

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No. 217.

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HARRY LEVY, Bankrupt,

*Petitioner,*

*v.*

INDUSTRIAL FINANCE CORPORATION, METROPOLITAN TRUST COMPANY, and CHATHAM & PHENIX NATIONAL BANK OF NEW YORK,

*Respondents.*

---

## BRIEF FOR RESPONDENTS.

The judgment of the Circuit Court of Appeals for the Fourth Circuit, to which this writ has been granted, is styled Harry Levy *versus* Industrial Finance Corporation, 16 Fed. (2nd), 769.

### Grounds of Jurisdiction.

This Court, by order filed May 16, 1927 (Rec., 141) granted a petition for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

### Statement.

On the 10th day of December, 1924, the petitioner was adjudged a bankrupt by the District Court of the United

States for the Eastern District of Virginia; on the 14th day of January, 1925, the petitioner filed his petition for discharge in bankruptcy.

On the 30th day of March, 1925, the respondents filed specifications in opposition to the discharge of the petitioner as a bankrupt (Rec., 7), to which said specifications the petitioner duly filed his exceptions (Rec., 9). Thereafter the respondents filed amended specifications of objections to the petitioner's discharge as a bankrupt (Rec., 9), to which amended specifications the petitioner filed his exceptions and answer (Rec., 49).

The Honorable District Court of the United States for the Eastern District of Virginia, did, on the 24th day of June, 1925, by proper order, refer to the Honorable R. T. Thorp, as Special Master, the issues raised by said specifications of objections to discharge, exceptions and answer thereto for finding and report to the Court (Rec., 50).

The Special Master on the 11th day of September, 1925, in obedience to the decree of reference, made his findings of fact and recommended that the petitioner be granted his discharge (Rec., 53-61).

The respondents, as objecting creditors, on the 25th day of September, 1925, filed exceptions to the findings and report of the Special Master (Rec., 119) and upon a hearing thereof, the District Court sustained said exceptions and entered a final order denying to the petitioner his discharge in bankruptcy (Rec., 121-123).

The petitioner sued out an appeal from and filed his petition to review and revise in matter of law the final judgment of said District Court. The Circuit Court of Appeals for the Fourth District, on the 13th day of January, 1927, pronounced its judgment (Rec. 140) dismissing the petition to review and revise and affirming the judgment of the District Court on appeal.

This Court, by order filed May 16, 1927 (Rec. 141), granted a petition for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

**Argument.**

This case presents the following question:

"Is the bankrupt entitled to discharge, notwithstanding the making of the false statements in writing, because the money which was obtained by means thereof was received not by him but by the corporation?" (Rec., 133).

There is involved the construction of Section 14-b(3) of the Bankruptcy Act of 1898, as amended in 1903 and 1910. Said Section 14-b(3) reads as follows:

> "Sec. 14. *Discharges, when granted.*— * * *
>
> "(b) The judge shall hear the application for a discharge, and such proofs and pleas as may be made in opposition thereto by the trustee or other parties in interest, at such time as will give the trustee or parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has * * * (3) obtained money or property on credit upon a materially false statement in writing, made by him to any person or his representative for the purpose of obtaining credit from such person; * * *."

The Circuit Court of Appeals for the Fourth Circuit has held that under said Section 14-b(3) of the Bankruptcy Act of 1898 as so amended, the petitioner herein is not entitled to his discharge.

The essential facts upon which the Circuit Court of Appeals based its opinion, and as to which there is no dispute before this Court, are set forth in the opinion of the Circuit Court of Appeals as follows (Rec., 131-132), 16 Fed. (2nd) 770, 771:

"In 1922, the bankrupt was president of the American Home Furnishers' Corporation, a concern in which he and his sister-in-law owned more than two-thirds of the 30,000 shares of stock and of which he had general management and control. Prior to obtaining the money on the statements in question here, he and his sister-in-law had borrowed $550,000 on their real estate holdings, out of which debts of the corporation had been paid, and this gave him an added interest in keeping it afloat. On September 30, 1922, he obtained a loan of $1,500,000 for the corporation from objectors, upon a series of notes, the payment of which he guaranteed personally. To obtain this loan, he first furnished to objectors a financial statement of the company, and later transmitted to them an audit made by auditors employed by the corporation with their approval. Both the financial statement and the audit were false, in that they showed the assets of the company to be greater than they actually were by a very large amount. They were based on books which had been padded by carrying the same merchandise on two inventories, and by carrying as assets worthless accounts in cases where goods sold had been repossessed for failure to meet payments. In the latter class of cases both the accounts and the repossessed merchandise were carried as assets. It was shown that the padding due to the manipulation of inventories amounted to nearly half a million dollars, and that the padding due to the carrying of worthless accounts as assets amounted to a very large sum, making a total overvaluation of approximately $1,000,000 in a business whole assets exceeded its liabilities, exclusive of stock liabilities, by only about $3,000,000.

"The padding of the books was discovered in the spring of 1923, when one Schreffler, the assistant treasurer, disclosed the condition of affairs at

a meeting of representatives of banks which was being held with a view of refinancing the corporation. Schreffler stated that this padding of the books had existed since prior to the furnishing of the statement and audit upon which the $1,500,000 loan had been made, and evidence was introduced on the hearing sustaining this statement on his part. He also stated that the books had been padded at the direction of the bankrupt; and one Morris, the representative of the objectors who was present at this meeting, testifies positively that, when bankrupt was called into the meeting and confronted with these charges, he admitted them to be true, but pleaded that what he had done had been done, not for personal profit, but in an effort to save the company. The corporation was placed in bankruptcy some months thereafter, and the bankrupt's guaranty of its notes necessitated his being placed in bankruptcy also; his liability on these notes constituting the principal liability of his estate.

"There is practically no question under the evidence that the written statements furnished as the basis for securing the loan for the corporation were materially false and that the objectors relied upon them in making the loan. We are satisfied, also, that they were false to the knowledge of the bankrupt. It is true that he denies knowledge of the padding of the books, and denies making the admission testified to by Morris, and in fairness to him it should be stated that he produced two witnesses who were present at the meeting, and who testified that they did not remember hearing him make the admission. On the other hand, it is certain that the books were padded, and that bankrupt was deeply interested in the corporation and had complete charge of its affairs. No one else, so far as the evidence shows, had any interest in padding the books, and it is inconceivable that

they should have been padded as they were without his knowing of it."

## POINT I.

**Section 14b(3) of the Bankruptcy Act of 1898, as amended in 1903 and 1910, should not be construed to mean that the bankrupt must have received the "money or property" personally.**

(a) *The language of Section 14b(3) does not indicate a legislative intent to restrict its scope to cases where the bankrupt has received the property personally.*

Section 14b(3) says merely "*obtained* money or property on credit upon a materially false statement in writing, made by him to any person or his representative for the purpose of obtaining credit *from such person.*"

The meaning of a statute must first be sought in the language employed and if that be plain it is the duty of the courts to enforce the law as written.

> *United States* v. *Standard Brewery*, 251 U. S. 210;
> *Thompson* v. *United States*, 246 U. S. 547.

It is respectfully submitted that the language of Section 14b(3) is plain and expresses clearly a legislative intent to make the section applicable to all cases where a bankrupt has deprived any person of his money or property by means of false statements in writing.

A court in interpreting a statute should first read the statute according to the natural and obvious import of its language and if the language is plain should not insert words or phrases so as to incorporate in the statute a new and distinct provision.

> *United States* v. *Temple*, 105 U. S. 97, 99;
> *Moore* v. *United States*, 249 U. S. 487.

Congress was free to limit the scope of Section 14b(3) to cases where the bankrupt has personally received or obtained property by means of his false statements by inserting in the statute such words as "for himself" or "for his own use" or words of similar import. It is respectfully submitted that since Congress did not so limit Section 14b(3), this Court in construing the section, should not so limit it by implication. To do so would be to amend the statute, not to construe or interpret it.

(b) *To so limit the scope of Section 14b(3), would tend to defeat the legislative intent of Congress in adopting it.*

The words of a statute are not to be bent one way or another, but to be taken in the sense which would best emphasize the legislative intent.

> *Sacramento Nav. Co.* v. *Salz*, 273 U. S. 326, 330;
> *United States* v. *Hartwell*, 6 Wall. 385;
> *United States* v. *Corbett*, 215 U. S. 233, 242.

The intent of Congress in adding Section 14b(3) to the Bankruptcy Act of 1898 was to deny the benefits of a general discharge to those debtors who, by doing the act defined in Section 14b (3), have demonstrated their general unfitness for commercial intercourse.

In discussing the intent of Congress in adopting Section 14b(3) of the Bankruptcy Act, the Court in the case of *In re Day*, 268 Fed. 871, at page 872, stated:

> "Section 14b is addressed to the bankruptcy court only, and is not for the benefit of any particular creditor or class of creditors, and by its express terms may be invoked on any application for discharge by the trustee or other party in interest to entirely defeat the discharge. The purpose of the section is to preserve the discharge feature of the

> Bankruptcy Act from abuse, and deny its benefits to one who has shown himself unworthy of them in any of the ways specified in the section. The section is at bottom one of penalty or forfeiture, and one of the things penalized is the commercial dishonesty manifested by obtaining a credit on a materially false statement in writing, made to induce the credit."

The Court, in *Gilpin* v. *National Bank*, 165 Fed. 607, at page 612, spoke as follows:

> "The bankrupt who has made to a creditor, for the purpose of obtaining credit, a false statement,—that is, one intentionally and knowingly untrue, is unworthy of the privilege of a discharge under the act, and the court will act upon information brought to it of such an act by any party in interest. It will be at once conceded on all hands, that such a bankrupt is unworthy, and should not receive the favor accorded by the law to the honest but unfortunate debtor. Some of the cases cited by the appellee conflict with the view here stated, but the weight of authority, as of reason, supports it."

> "The basis of this bar to discharge is that the moral turpitude of such conduct demonstrates the bankrupt's general unfitness for commercial intercourse."

> *Remington on Bankruptcy*, 3rd Ed., Vol. 7, pp. 354, 355.

An objecting creditor is not confined to simply urging the non-dischargeability of his debt, but may also prevent the bankrupt's discharge from all of his debts.

> *In re Day* (*supra*);
> *Friend* v. *Talcott*, 228 U. S. 27, at page 40.

Any party in interest may oppose the discharge of a

bankrupt under Section 14b(3) even though the representations were not made to him nor the money given by him.

*In re Harr*, 143 Fed. 421;
*In re Schaffer*, 169 Fed. 724;
*In re Miller*, 192 Fed. 730;
*In re Fackler*, 246 Fed. 864.

Section 14b(3) was added to the Bankruptcy Act of 1898 by the Amendatory Act of 1903, as one of four new objections to discharge added at that time to meet a condition resulting from the adoption of the Bankruptcy Act of 1898 without sufficient bars to discharge. It is generally conceded that the Bankruptcy Act of 1898 was woefully weak in its provisions limiting the discharge of bankrupts. As a result, for the five years immediately following its enactment, the country witnessed what has been described as a commercial jail delivery. Congress in 1903 realized the need of restricting the granting of general discharges in bankruptcy and adopted, among others, Section 14b(3). For an authoritative discussion of the history of the enactment of this section, the Court is respectfully referred to Gilbert's Collier on Bankruptcy, 1927, page 309. There is also a discussion of the subject in the case of *In re Gilpin*, 160 Fed. 171.

It is respectfully submitted that a bankrupt, who has obtained money or property upon materially false statements in writing from another, whether it be for another person, a corporation or a partnership, is as unfit for commercial intercourse as a bankrupt who has obtained money or property upon materially false statements in writing for himself. Both are a menace to commerce and neither should be granted the high privilege of a discharge in bankruptcy.

(c) *To give such a narrow construction to Section 14b(3) would be to give it a meaning contrary to the reason and spirit of the Bankruptcy Act.*

The true reason and spirit of the Bankruptcy Act has often been the subject of discussion in this Court and in other Federal Courts.

In *Wetmore* v. *Markoe*, 196 U. S. 68, at page 77, the Court says:

> "Systems of bankruptcy are designed to relieve the honest debtor from the weight of indebtedness which has become oppressive and to permit him to have a fresh start in business or commercial life, freed from the obligation and responsibilities which may have resulted from business misfortunes."

In *Burlingham* v. *Crouse*, 228 U. S. 459, at page 473, the Court says:

> "It is the twofold purpose of the Bankruptcy Act to convert the estate of the bankrupt into cash and distribute it among creditors and then to give the bankrupt a fresh start with such exemptions and rights as the statute left untouched. In the light of this policy the act must be construed."

In *Hanover National Bank* v. *Moyses*, 186 U. S. 181, at page 192, the Court says:

> "The determination of the *status* of the honest and unfortunate debtor by his liberation from encumbrance on future exertion is matter of public concern, and Congress has power to accomplish it throughout the United States by proceedings at the debtor's domicil."

In *Williams* v. *U. S. Fidelity Co.*, 236 U. S. 549, at pages 554-555, the Court says:

> "It is the purpose of the Bankrupt Act to convert

> the assets of the bankrupt into cash for distribution among creditors and then to relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes. *Wetmore* v. *Markoe*, 196 U. S. 68, 77; *Zavelo* v. *Reeves*, 227 U. S. 625, 629; Burlingham *v.* Crouse, 228 U. S. 459, 473. And nothing is better settled than that statutes should be sensibly construed, with a view to effectuating the legislative intent. *Lau Ow Bew* v. *United States*, 144 U. S. 47, 59; *In re Chapman*, 166 U. S. 661, 667."

In the case of *Neal* v. *Clark*, 95 U. S. 704, at page 709, the Court says:

> "Such a construction of the statute is consonant with equity, and consistent with the object and intention of Congress in enacting a general law by which the honest citizen may be relieved from the burden of hopeless insolvency. A different construction would be inconsistent with the liberal spirit which pervades the entire bankrupt system."

In *In re Harr*, 143 Fed. 421, at page 424, the Court says:

> "To sustain the contention of the learned counsel for the bankrupt, the court would have to interpolate after the word 'person' the following: 'Who is a creditor of the bankrupt at the time of his adjudication'—or add the proviso, 'That the bankrupt estate was injuriously affected thereby.' This is not permissible; courts cannot legislate under our system of government. They can only enforce or construe the laws as enacted by the legislative department. One of the main objects of the bankruptcy act is to protect unfortunate, but honest, debtors. Fraudulent debtors are not intended to be protected, nor to escape payment of their just liabilities. The bankruptcy act as originally

passed did not contain this provision. No doubt the experience after the enactment of the original bankruptcy act in 1898 caused Congress to make this amendment in order to prevent bankrupts to obtain property on credit upon false representations from enjoying the benefits of the act and receiving a discharge from their liabilities. When the intention of the lawmakers is clear, the duty of the courts is to carry it into effect."

In *Barton Bros.* v. *Texas Produce Co.*, 136 Fed. Rep. 355, at page 357, the Court says:

> "The spirit of the bankrupt act is commendable. Its purpose is to release the honest debtor from the burden of debts which he is unable to longer carry; to give freer play to his energies and enterprises, that he may thereafter be better able to support himself and those dependent upon his earnings, and thereby be in position to render a better service to the state and to society."

*In re James*, 181 Fed. Rep. 476, at page 479, the Court says:

> "We think not. A bankrupt in order to be entitled to a discharge, must come into court with clean hands, and show that his conduct has been that of an honest, upright man. But, under the circumstances of this case, it cannot be reasonably insisted that a court of justice should, by its decree, proclaim to the public that one who concealed his goods for the purpose of defrauding his creditors had dealt fairly with his fellowman, and that such an individual is entitled to the benefits of an act intended to promote honesty and fair dealing."

*In re Feinberg*, 287 Fed. Rep. 254, at page 255, the Court says:

> "(1) The Bankruptcy Act authorizes the judge

to discharge the Bankrupt, unless he has, *inter alia* [Section 14b (3], 'obtained money or property on credit upon a materially false statement in writing, made by him to any person or his representative for the purpose of obtaining credit from such person.' The bankrupt's discharge is not the primary purpose of the Bankruptcy Act, nor is it an absolute right of the bankrupt. It is a privilege the law extends to him, unless it is shown that he has done one or more of the things provided in Section 14 as grounds for refusal of his discharge. The primary purpose of the act is to collect the assets of the bankrupt and distribute them fairly and equitably among his creditors. In *re* Miller (D. C.), 135 Fed. 591; In *re* Dresser & Co., 146 Fed. 383, 76 C. C. A. 655; In *re* Levenstein (D. C.), 180 Fed. 957.

"(2) As the court said in the latter case, if the bankrupt's dealings have been fair and honest, he may be discharged from the balance of his indebtedness as an incentive to further honest effort to obtain a livelihood. It must be obvious then that he who seeks to avoid his debts under the Bankruptcy Act must comply strictly with its provisions."

*In re Levenstein,* 180 Fed. Rep. 957, at page 958, the Court says:

"That law furnishes the only method by which one can escape the payment of his debts, except by actually paying them in full or settling them by compromise. Neither this law nor any of its predecessors was passed by Congress for the particular purpose of enabling the debtor to cancel his debts. The primary purpose of all such laws is to distribute the assets of the bankrupt equally and fairly amongst his creditors, and as an incident thereto the present law provides that he may, if his dealings have been fair and honest, be discharged from the balance of his indebtedness as

> an incentive to further honest effort to obtain a livelihood. It must be obvious, then, that he who seeks to avoid his debts under the bankrupt act (Act July 1, 1898, c. 541, 30 Stat. 550 [U. S. Comp. St. 1901, p. 3427]) must comply strictly with its provisions. * * * The bankrupt undertakes to show that he is an honest man, but has been unsuccessful; that he has committed no fraud, but has been the victim of misfortune. If he can establish these facts, he goes free; if he cannot, he has wasted his time and bothered the court to no good purpose."

The general subject of the Bankruptcy Law, its intents and purposes, was treated by Blackstone in his Commentaries on the English Law, see Cooley's Blackstone's Commentaries on the English Law, Fourth Edition, Book II, pages 471-474.

Story in his Commentaries on the Constitution of the United States, §1106, defined the objects of bankruptcy laws as follows:

> "Without stopping at present to consider what is the precise meaning of each of these terms, as contradistinguished from the other, it may be stated, that the general objects of all bankrupt and insolvent laws is, on the one hand, to secure to creditors an appropriation of the property of their debtors *pro tanto* to the discharge of their debts, whenever the latter are unable to discharge the whole amount; and, on the other hand, to relieve unfortunate and honest debtors from perpetual bondage to their creditors, either in the shape of unlimited imprisonment to coerce payment of their debts, or of an absolute right to appropriate and monopolize all their future earnings. * * * One of the first duties of legislation, while it provides amply for the sacred obligation of contracts, and

> the remedies to enforce them, certainly is, *pari passu*, to relieve the unfortunate and meritorious debtor from a slavery of mind and body, which cuts him off from a fair enjoyment of the common benefits of society, and robs his family of the fruits of his labor and the benefits of his paternal superintendence."

The true reason and spirit of the Bankruptcy Act may also be seen in the history of the development of Bankruptcy Law. The history of this law indicates that it was originally merely a creditors' law aimed at the equitable distribution of the bankrupt's estate among his creditors and giving no thought to freeing the debtor from his debts. The modern bankruptcy laws however, have provided for the discharge from their debts of *honest* but unfortunate debtors under certain circumstances. The attention of the Court is respectfully drawn to a full and complete résumé of the history of the Bankruptcy Act of 1898 and the English and early American Bankruptcy Acts upon which it was based contained in *Remington on Bankruptcy*, Third Edition, Vol. I, pages 1 to 21. Mr. Remington first considers the origin of the law of bankruptcy and refers to the ancient Jewish and Roman debtor laws, then points out that the American bankruptcy laws are derived from the English bankruptcy acts and then considers in detail the English and American bankruptcy statutes.

At page 18 he gives his views on the meaning and idea of bankruptcy law today and from this we quote the following:

> "(n) *Meaning and Idea of Bankruptcy Law Today.*—This somewhat extended review of the origin and history of the Bankruptcy Laws of the past, from which the present system of bankruptcy law

has sprung, places one in a position more intelligently to define the idea of bankruptcy law as it exists to-day in the United States, not meaning by this that the definition so arrived at would have been a proper one at all stages of history; for, as already noted, the idea and objects of bankruptcy law have undergone considerable development and change since the time the first harsh statutes of England were passed to repress and suppress the 'offense' as it was then considered to be, of bankruptcy, and to punish the offender.

> "Justice Miller, in Wilson *v.* City Bank, 17 Wall. (U. S.) 473, 21 L. Ed. 723, says: 'The primary object of a bankruptcy law is to secure a just distribution of the bankrupt's property among his creditors: the secondary object is the release of the bankrupt from the obligation to pay his debts.'"

With particular reference to the history of the provisions relating to the discharge of bankrupts, the attention of the Court is respectfully drawn to a treatment of the subject contained in *Remington on Bankruptcy*, Third Edition, Volume VII, pages 189 to 194, from which we quote the following:

> "It has been noted already that bankruptcy law was originally a creditors' law—a swift, sharp remedy placed in the hands of creditors for seizing upon the property and person of absconding or hiding debtors, for ferreting out concealed assets, for reducing them to money, and for distributing them equitably among creditors. There was originally no thought of affording any relief therein to the debtor himself by freeing him from further molestation for his old debts.
>
> * * * * * * * *

"And perhaps it is not an absolutely essential idea, or part, of bankruptcy law, but merely an incident to it.

* * * * * * * *

"Indeed, bankruptcy was a felony, being expressly declared such by the statute of King James I, and the bankrupt could be thankful if his adjudication as bankrupt did not result in his being imprisoned as a felon.

"But, as a clearer appreciation arose of the vast change that was taking place in the commercial world; that men were beginning to do business for the general market, no longer waiting for specific orders, and that, as a consequence, business was coming more to be done on credit, and that it was becoming more necessary for producers and merchants alike to take chances in disposing of their goods upon the general market, a modified feeling arose with regard to those who failed in business. It began to be understood that a merchant, obtaining goods on credit and taking risk in disposing of them upon the general market, might miscalculate, or might be improvident, and might fail, leaving a great body of creditors unpaid, and yet that he might not be a criminal nor be of fraudulent mind. It was precisely this change in the manner of doing business that, as we have seen, made inadequate the old common-law remedies of attachment and execution, and brought about the enactment of the first Bankruptcy Act. But, at first, as the provisions of the statutes would seem to indicate, the real import and extent of the change do not seem to have been apprehended. Finally, however, a more just and sensible understanding of the actual situation came about; and the idea developed that, if a debtor, who had thus taken chances and failed, nevertheless did all he could, thereupon, to aid his creditors in discovering assets and in realizing the most out of them, he should be granted a

discharge from the unpaid and unsatisfied remainder, the idea being three-fold: That it was just and humane to the debtor himself, that it aided creditors in discovering and recovering assets, and that it was in the interest of a sound public policy not to keep the debtor forever in bondage to his debts, but to restore his energies to the business community.

"This idea of a discharge first became implanted in bankruptcy jurisprudence in the reign of Queen Anne, about one hundred and sixty years after the first bankruptcy law was enacted. The first provision for discharge will be found quoted in the Introduction at § (i).

"Thus, in the beginning, the privilege of discharge was granted very sparingly, and was left much to the discretion of the court.

"The first United States Bankruptcy Act that provided unqualifiedly for the discharge of the debtor was that of 1841."

With reference especially to the history of the discharge features of the Bankruptcy Act we quote the following from *Gilbert's Collier on Bankruptcy*, 1927, page 307 and 308:

"1. HISTORY AND COMPARATIVE LEGISLATION.

"*a. Discharges under Roman and continental systems.*—Republican Rome punished the bankrupt with slavery, and, it is said, in some cases, even permitted the creditors to prorate the debtor's body, as well as his estate; Rome under the emperors, however, granted a discharge to the honest insolvent. The savagery of the early Latins, though much softened, still survives in the continental bankruptcy systems of to-day. Thus, in France, not only must a bankrupt in effect pay his debts in full, but there are three classes of bankrupts: (1) those whose condition is due to misfortune, and who are, therefore, not liable to imprisonment; (2)

those who have been guilty of misconduct not tantamount to an actual fraud, who may be imprisoned from one month to two years; and (3) those whose bankruptcy is fraudulent, who may be sentenced to penal servitude for not less than five nor more than twenty years. These restraints on the liberty of the dishonest trader are characteristic of all European laws. They are a survival of the time when inability to pay a debt was a crime.

"*b. Discharges under English and Canadian systems.*—England stands about midway between the above referred to systems and our own. Fraudulent bankruptcy is a crime, but, except as against certain well-defined statutory objections, a discharge may generally be obtained whatever be the rate per cent. paid. The Canadian act is similar in effect to the English statute as regards discharges.

"*c. Origin and nature of discharge.*—We have grown to look upon the discharge feature as the primal element of bankruptcy jurisprudence. Being too easily obtained, it has resulted in abuse, and, therefore, reprobation. The fact is, however, that the discharge feature was not grafted on our Anglo-Saxon bankruptcy system until the fourth year of Anne, two hundred and fifty years after England's first bankruptcy law, and that, in its inception, it was a device to keep bankrupts in England. Strictly speaking, it is no more a part of a bankruptcy law—which concerns itself with the equitable division of a debtor's assets—than are those sections which define bankruptcy crimes. It is unfortunate that our legislators and jurists have so long overlooked its origin. Else we would not to-day, from this point of view, seem a people given to financial jubilees. The fundamental and original element of every system of bankruptcy has been to provide for and regulate the distribution of the bankrupt's property equally among his creditors; latterly a sec-

ond element was added in the provisions for discharge upon such terms and conditions as the act may provide.

For further discussions on this point see the following:

15 *Harvard Law Review* 829;
66 *Pa. Law Review* 223;
21 *Am. Leg. News* 563;
*Re Broun*, 3 De G. & J. 369;
*Re Lawrence*, 30 L. J. B. K. 33.

(d) *The Courts which have construed Section 14b (3) have not generally so construed it so as to require that the money or property be received by the bankrupt personally.*

*In re Aldridge*, 168 Fed. 93;
*In re Dresser*, 144 Fed. 318;
*In re Bleyer*, 215 Fed. 896;
*Pech* v. *Lowenbein*, 178 Fed. 178;
*Frank* v. *Michigan Paper Co.*, 179 Fed. 776;
*Ragan, Malone & Co.* v. *Cotton & Preston*, 200 Fed. 546;
*In re Terens*, 172 Fed. 938.

(e) *The Courts do not place such a narrow construction on the very similar False Pretense Statutes.*

It is to be noted that Section 14b(3) is very similar to the criminal statutes against obtaining money by false pretenses. The construction placed upon these statutes should therefore be helpful to the Court in construing Section 14b(3).

In order to sustain a conviction for obtaining money or property by false pretenses, the Courts today do not generally require that the money or property must have been received by the accused.

*Commonwealth* v. *Harley*, 7 Met. (Mass.) 462; 1844.

*Commonwealth* v. *Langley*, 169 Mass. 89; 1897.

*Fisher* v. *State*, 161 Ark. 586; 1923.

*People* v. *Woods*, 59 Cal. App. 740; 1922.

*People* v. *Aronson*, 156 N. Y. Supp. 396; 1915.

The Court in the case of *In re Applebaum*, 11 Fed. (2d) 685, at page 687, relied upon by the petitioner herein, spoke as follows:

> "The English statute against false pretenses, in its original form, was interpreted as requiring the accused to get the property. Rex *v.* Garrett, 6 Cox C. C. 260; Jones *v.* U. S., Fed. Cas. No. 7499; Willis *v.* People, 19 Hun 84; People *ex rel.* Phelps *v.* General Sessions, 13 Hun 396, 400; Bracey *v.* State, 64 Miss. 26, 8 So. 165. It was changed (24 and 25 Vict. c. 96, §89), and to-day either by statute or by decision the law is generally the other way. (Commonwealth *v.* Harley, 7 Metc. (Mass.) 462; Commonwealth *v.* Langley, 169 Mass. 89, 47 N. E. 511; Fisher *v.* State, 161 Ark. 586, 256 S. W. 858; People *v.* Woods, 59 Cal. App. 740, 212 P. 41; People *v.* Aronson, 173 App. Div. 734, 156 N. Y. S. 396, affirmed 218 N. Y. 684, 113 N. E. 1062)."

It is respectfully submitted that an examination of the dates of the leading decisions cited in the case of *In re Applebaum* quoted above indicates that in 1903, the date of the enactment of Section 14b(3), the generally accepted construction of the False Pretense Statutes was that the accused need not receive the money or property personally. The rule in England was changed by statute (24 and 25 Vict. c. 96, §89) in 1861. This being the case, it may reasonably be presumed that Congress, in using words similar to those of the False Pretense Statutes, had in mind the meaning which was given to such words by

the courts at that time and did not intend to use the words with the meaning given to them by a few early decisions no longer generally followed. It is respectfully submitted that the Court in the case of *In re Applebaum* (*supra*) erred in *supposing* that Congress, when it chose the words of the False Pretense Statutes, accepted the original interpretation along with them and not the general meaning which was given to the words by the Court at the time of the enactment of the statute.

The False Pretense Statutes are criminal statutes and as such are strictly construed in favor of the accused. It is submitted that Section 14b(3), not being a criminal statute, should not be construed more strictly in favor of bankrupts than are the False Pretense Statutes in favor of criminals.

## POINT II.

**Assuming that Section 14b(3) of the Bankruptcy Act of 1898, as amended in 1903 and 1910, is to be properly construed to mean that the bankrupt must have received the "money or property" personally, the bankrupt herein comes clearly within its scope.**

(a) *The bankrupt petitioner herein was the president and principal stockholder of the corporation which received the money obtained by his false statements and as such received a benefit as a result thereof.*

It is not necessary to ignore the corporate entity theory to find that the principal stockholder of a corporation, the assets of which exceeded its liabilities, exclusive of stock liabilities, by only $3,000,000, is benefited by having $1,500,000 poured into its coffers, especially at a time

when money was needed to keep the corporation from failure. The bankrupt herein was not the ordinary semi-interested president and stockholder of a large corporation. He was interested in the corporation as the legal structure into which had been molded his life work and his entire wealth and earnings. The corporation was to him no "third person." His attention to the corporation shows his interest. When the corporation first needed money he obtained it by mortgaging his real estate and that of his sister-in-law. When further money was necessary it came from the unauthorized use by the bankrupt of second mortgage bonds of the Levy Realty Company, and finally, when the large loan was needed, the bankrupt personally guaranteed each and every note. It is submitted that one does not give such unselfish attention to a "third person" or to a corporation when one expects to obtain no personal pecuniary benefit. When the bankrupt found that the padding of the books had been discovered, and that therefore no further loans could be expected, his feelings, as expressed in his own words, were, "I saw my finish, my financial finish" (Rec., 117). The attention of the Court is called to the fact that at such a moment he did not see the failure of the corporation as the end of a cold legal structure of which he was merely the president, but rather as his own finish.

(b) *The bankrupt herein was a creditor of the corporation which received the money obtained by his false statements and as such creditor obtained a benefit.*

The facts (Rec. 114) show that prior to the making of the loan to the corporation by the respondents herein, the bankrupt and his sister-in-law borrowed $550,000 on their real estate holdings and used the money to pay debts of the corporation. The record does not show that any of this money was repaid to the bankrupt. In fact,

the inference that must be drawn from the testimony of the bankrupt is that the money was not repaid. At the time of the obtaining of the loan from the respondents, therefore, the bankrupt was a creditor of the corporation.

It is respectfully submitted that it was to the interest of the bankrupt as such creditor to have $1,500,000 loaned to the corporation in order to keep it a going concern. By causing $1,500,000 to be advanced by respondents, he considerably increased his chances of having repaid the amounts which he expended from his own funds to meet the corporation's debts.

(c) *The bankrupt herein was the endorser of the entire series of notes of the corporation upon which the money obtained by his false statements was loaned and the bankrupt as such endorser obtained credit personally.*

> "An endorsement virtually means the giving of the money by the bank to the indorser, who, in turn, pays it over to the maker. By a short cut and means of credit and bookkeeping, the actual money is paid to the maker instead of indirectly to the indorser. Thus the indorser receives the benefit."
>
> *People* v. *Aronson, et al.*, 156 N. Y. S. 396, page 397; aff'd 218 N. Y. 684.

The principal debt of the bankrupt herein is that which arose out of the obtaining of the money in question (Rec., 133).

## POINT III.

**The bankrupt herein, upon the facts considered by the Circuit Court of Appeals, should be denied his discharge.**

A bankrupt has no constitutional right to be discharged from his debts. He must look to the statute.

*Hanover National Bank* v. *Moyses*, 186 U. S. 181;
*In re Neely*, 134 Fed. 667.

A discharge in bankruptcy is a high privilege, to be granted only to honest debtors.

*Wetmore* v. *Markoe*, 196 U. S. 68, 77;
*Hanover National Bank* v. *Moyses*, 186 U. S. 181, 192;
*Williams* v. *U. S. Fidelity Co.*, 236 U. S. 549;
*In re Harr*, 143 Fed. 421, 424;
*In re Feinberg*, 287 Fed. 254, 255;
*In re Levenstein*, 180 Fed. 957;
*In re James*, 181 Fed. 476, 479;
*Barton Bros.* v. *Texas Produce Co.*, 136 Fed. 355, 357;
*Remington on Bankruptcy* (3rd Ed.), Vol. VII, page 189;
*Gilbert's Collier on Bankruptcy*, 1927, page 307.

The bankrupt herein has demonstrated his unfitness to be given the high privilege of a discharge. The facts of the case clearly demonstrate his commercial dishonesty.

## POINT IV.

**Wherefore it is respectfully submitted that the judgment of the Circuit Court of Appeals for the Fourth Circuit should be affirmed with costs, and the bankrupt herein denied his discharge.**

Respectfully submitted,

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